Petition

81-1082

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No.

IN THE

Supreme Court of the United States

October Term, 1981

IN THE MATTER OF:
Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the Tank Vessel CORINTHOS, for Exoneration From and Limitation of Liability

BANKERS TRUST COMPANY, MONSANTO COMPANY and KEYSTONE SHIPPING CO.,
Petitioner,

VILLANEUVA COMPANIA NAVIERA, S.A.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

1. Must a federal court determine the intent of Congress before it can find statutory preemption and/or displacement of federal common law?

2. Is an existing general maritime law standard for private tort recovery preempted and/or displaced by a federal statute which neither changes the maritime standard nor provides private remedies? [1]

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1. Parties to the proceeding in the United States Court of Appeals for the Third Circuit were: Bankers Trust Company, Monsanto Company and Keystone Shipping Co., as owners and operators of the SS. EDGAR M. QUEENY; Villaneuva Compania Naviera, S.A., as owner and operator of the S.T. CORINTHOS; BP Oil Inc., as operator/lessee of a pier and refinery facility at Marcus Hook, Pennsylvania; and Sohio Petroleum Company as the owner/lessor of that same pier and refinery facility at Marcus Hook.

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OPINIONS

The Opinion of the United States District Court for the Eastern District of Pennsylvania is reported as: *Complaint of Bankers Trust Co.*, 503 F. Supp. 337 (E. D. Pa. 1980). (A37)

The Opinion of the United States Court of Appeals for the Third Circuit is reported as: *Complaint of Bankers Trust Co.*, 651 F. 2d 160 (3d Cir. 1981). (A1)

JURISDICTION

On May 15, 1981, the United States Court of Appeals for the Third Circuit rendered the judgment which petitioner seeks to have reviewed. On May 26, 1981, that court granted the joint motion of Villaneuva Compania Naviera, S.A., BP Oil Inc. and Sohio Petroleum Company, and Bankers Trust Company, Monsanto Company and Keystone Shipping Co. for an extension of time to file petitions for rehearing to June 19, 1981. Petitioner's petition for rehearing before that court *en banc* was filed on June 19, 1981. On July 8, 1981, the United States Court of Appeals for the Third Circuit denied petitioner's petition for rehearing *en banc*.

On September 29, 1981, petitioner applied to this Court for an extension of time in which to file a petition for writ of certiorari. On September 30, 1981, Justice William J. Brennan, Jr. signed an Order extending petitioner's time to and including December 5, 1981. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1254(1) (1976).

RELEVANT STATUTES

The primary statute involved in this petition is the Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, 92 Stat. 1471 (codified at 33 U. S. C. §§ 1221-1232; 46 U. S. C. §§ 214, 391a). (A108) A secondarily related statute is the Ports and Waterways Safety Act of 1972, Pub. L. No. 92-340, 86 Stat. 424.[2] (A91)

STATEMENT OF THE CASE

This case arises out of a collision which occurred on the Delaware River at Marcus Hook, Pennsylvania, during the early morning hours of January 31, 1975, when the chemical carrier SS. EDGAR M. QUEENY (hereinafter QUEENY), while making a turn in the river, struck the steam tanker S.T. CORINTHOS (hereinafter CORINTHOS), as she was discharging a cargo of crude oil at the BP/Sohio Terminal,[3] Marcus Hook, Pennsylvania. The resulting explosion and fire damaged the QUEENY, destroyed and sank the CORINTHOS, caused extensive property damage to the BP/Sohio Terminal as well as surrounding property owners in the Marcus Hook area, and caused numerous deaths and injuries.[4]

As a result of this collision, Bankers Trust Company, Monsanto Company and Keystone Shipping Co. (hereinafter collectively Keystone), owners and operators of the QUEENY, along with Villaneuva Compania Naviera

2. The Port and Tanker Safety Act of 1978 amends the Ports and Waterways Safety Act of 1972.

3. The terminal in Marcus Hook was owned by Sohio Petroleum Company and operated by BP Oil, Inc. They are collectively referred to herein as BP/Sohio.

4. The events leading up to the collision are not in dispute and this petition will adopt the facts as set forth in the opinion of the court of appeals in Section II. *Complaint of Bankers Trust Co.*, 651 F. 2d 160, 164-166; see A7-A11.

S.A. (hereinafter Villaneuva), owner and operator of the CORINTHOS, filed petitions for exoneration from or limitation of liability[5] pursuant to the Limitation of Liability Act.[6] Both Keystone and Villaneuva were damage claimants in each other's limitation proceeding as were those who suffered injury or loss, including BP/Sohio, owner and operator of the terminal where the CORINTHOS was located.[7]

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5. United States District Court for the Eastern District of Pennsylvania, Civil Action Nos. 75-364 and 75-2110. The jurisdiction of the district court was exercised pursuant to the admiralty and maritime jurisdiction of the federal courts. 28 U. S. C. § 1333 (1949).

6. 46 U. S. C. § 183 *et seq.* (1936). See R. 2, 75. "R" refers to the record appendix filed in the court of appeals. See Joint Appendix to the Briefs, *Complaint of Bankers Trust Co.*, Nos. 80-1405/1450/1494/1495/1496/1497, Vols. 1-7 (3d Cir. May 15, 1981).

7. In addition to these proceedings, a product liability action was filed by BP/Sohio against Bethlehem Steel Corporation, General Electric Company and The William Powell Company. See Complaint of BP Oil, Inc. and Sohio Petroleum Company, filed July 8, 1977, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 77-2362. Villaneuva filed a third-party complaint in the QUEENY limitation proceeding against Bethlehem Steel Corporation, General Electric Company and The William Powell Company. See Third Party Complaint of Villaneuva Compania Naviera, S.A., filed July 19, 1978, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 75-364 (R. 29).

These defendants, collectively referred to as the products or third party defendants, variously participated in the design and construction of the QUEENY, her turbine set and controls, and the astern guardian valve. Upon motion by the product liability/third party defendants at the time of trial, the product liability action was severed and stayed pending the resolution of the limitation actions. *Complaint of Bankers Trust Co.*, 651 F. 2d at 166, n. 5; see A-11 n. 5.

At trial on the issues raised in the liability petitions and the claims asserted by the three major parties,[8] the district court held that Villaneuva's petition for exoneration from liability was granted.[9]

With respect to Villaneuva's petition for exoneration from liability, the district court found that Villaneuva was, in fact, negligent for not inerting the CORINTHOS[10] and further found that such inerting would have either preven 1 or greatly reduced the chances of explosion on collision.[11] In spite of this finding, however, the district

8. The issue of damages was bifurcated from the issue of liability. *Complaint of Bankers Trust Company*, 503 F. Supp. 337, 339; see A39. The appeals leading to this petition have arisen from the trial of liability.

9. 503 F. Supp. at 348; see A61. With respect to Keystone's petition for limitation of liability, "[t]he district court found that the QUEENY's astern guardian valve and astern turbine were defective on the night of the accident and that this defective condition was a contributing cause of the tragic collision. It ruled that Keystone should have known of this defective condition and held them in privity. Thus, it denied Keystone's petition for limitation of liability." *Complaint of Bankers Trust Co.*, 651 F. 2d at 169; see A18.

10. 503 F. Supp. at 349; see A62. "Inerting is a process that fills the cargo tanks of ships—when they are emptied of oil cargo during discharge—with inert gas rather than air which contains oxygen. This process reduces the likelihood of explosion or fire on such vessels because it prevents the build-up of fuel vapor which, when combined with oxygen, explodes when there is an ignition source." *Complaint of Bankers Trust Company*, 651 F. 2d at 173; see A26.

11. 503 F. Supp. at 349; see A63. The importance of these findings by the district court must not be minimized. Claims for damages asserted herein exceeded $40,000,000. Without the explosion and fire resulting from this collision, many, if not most, of these claims would never have materialized. Proper inerting of the CORINTHOS would have prevented these consequences.

court held that it was precluded from holding the CORINTHOS liable because federal legislation had preempted the field of tanker safety.[12] The district court held itself preempted by The Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, 92 Stat. 1471 (codified at 33 U. S. C. §§ 1221-1232; 46 U. S. C. §§ 214, 391a) (hereinafter the 1978 Act).[13]

Petitioner appealed to the United States Court of Appeals for the Third Circuit. On May 15, 1981, that court reversed the district court's invocation of the preemption doctrine as well as its finding of unseaworthiness of the CORINTHOS.[14] The court remanded the action to the district court. On May 26, 1981, the Court of Appeals granted Keystone's motion for an extension of time in which to file a petition for rehearing on June 19, 1981.[15] Keystone filed a petition for rehearing before the court *en banc* on June 19, 1981. The court denied that petition on July 8, 1981.[16]

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12. 503 F. Supp. at 348; see A61.

13. *Id.*

14. *Complaint of Bankers Trust Co.*, 651 F. 2d at 175; see A31-A32. The court of appeals further reversed the district court with respect to its denial of the petition of limitation of liability to Keystone. *Id.*; see A31.

Keystone maintains an interest in the distribution of the QUEENY's limitation fund because it stands in the same position, with respect to the limitation fund, as would each claimant with whom Keystone has reached settlement. Pro Tanto Order, signed by Judge Charles Weiner of the United States District Court for the Eastern District of Pennsylvania, dated July 18, 1979. See Trial Transcript July 18, 1979, pp. 57-58 and July 19, 1979, p. 39; R. 60. Keystone has reached settlement with personal injury and property damage claimants in aggregate total of approximately $17,000,000.

15. A81.

16. A84.

On September 28, 1981, petitioner applied to this Court for an extension of time in which to file a petition for writ of certiorari. On September 30, 1981, Justice William J. Brennan, Jr. signed an order extending petitioner's time to and including December 5, 1981.[17] This petition for a writ of certiorari followed.

ARGUMENT

The decision of the court of appeals stands the doctrine of "federal displacement" on its head. That decision conflicts with the two principle holdings of this Court in *City of Milwaukee v. Illinois and Michigan*,[18] in that:

(1) the lower court did not employ the legal analysis articulated and followed in the *City of Milwaukee* for displacement of federal common law; and

(2) the lower court held the federal common law displaced by a federal statute which would not displace the common law under the *City of Milwaukee* analysis.

The decision below departs from the holdings of *City of Milwaukee* in a case where, if decided upon the principles of *City of Milwaukee*, a different result would be reached.

Furthermore, this petition presents this Court with an opportunity to clarify its statement that *City of Milwaukee*

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17. A90; No. A-263.

18. — U. S. —, 101 S. Ct. 1784 (1981). *City of Milwaukee* was decided on April 28, 1981, just 17 days prior to the court of appeals' May 15, 1981 decision in this case. The *City of Milwaukee* decision was brought to the attention of the court of appeals by letter dated May 12, 1981 forwarded by counsel for BP/Sohio.

does not create a doctrine of "automatic displacement".[19] The lower court has in effect found automatic displacement of general maritime law through its failure to properly analyze a federal statute to find specific or even implied Congressional intent to displace. In contrast to the *City of Milwaukee*, this case presents a clear example of Congressional entry into a sphere of conduct without the intention of displacing rights and remedies under existing federal common law. Thus, in the first post-*Milwaukee* decision to address a different statutory scheme, the court of appeals has followed a conflicting analytic route to reach a conflicting result.

In support of its petition for a writ of certiorari petitioner respectfully asserts as follows:

I. The Decision Below Conflicts in Principle With a Decision of This Court and Presents an Important Question of Law Which Has Not Been, But Should Be, Settled by This Court: Must a Federal Court Determine the Intent of Congress Before It Finds Statutory Preemption and/or Displacement of Federal Common Law?

At issue in this petition is whether a circuit court of appeals may find statutory preemption or displacement of general maritime law without first determining whether or not Congress intended such a result. Specifically, does the lower court's finding that the CORINTHOS was seaworthy as a matter of law conflict with the mandate of this Court as set down in *City of Milwaukee*.

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19. "The dissent errs in labeling our approach 'automatic displacement' ". 101 S. Ct. at 1791 n. 8.

In *City of Milwaukee v. Illinois and Michigan*,[20] the federal common law of nuisance was held displaced by the 1972 Amendments of the Federal Water Pollution Control Act (FWPCA).[21] In holding the federal common law preempted, this Court outlined the analytic framework for federal displacement:

> [T]he question whether a previously available federal common-law action has been displaced by federal statutory law involves an assessment of the scope of the legislation and whether the scheme established by Congress addresses the problem formerly governed by federal common law.[22]

City of Milwaukee is already established as the preeminent authority on the interrelation of the federal common law and federal legislation.[23]

The decision of the court of appeals does not follow the preceding mandate but rather invokes the "automatic displacement" approach specifically rejected by this Court. The lower court "assumes that as soon as Congress addresses a question previously governed by federal common law, the need for such an unusual exercise of lawmaking by

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20. — U. S. —, 101 S. Ct. 1784 (1981).

21. Pub. L. 92-500, 86 Stat. 816 (codified at 33 U. S. C. § 1251 et seq.).

22. *City of Milwaukee*, 101 S. Ct. at 1791 n. 8.

23. See *Middlesex County Sewerage Authority v. National Sea Clammers Association*, — U. S. —, 101 S. Ct. 2615 (1981); *Texas Industries, Inc. v. Radcliff Materials*, — U. S. —, 101 S. Ct. 2061 (1981); *New England Legal Foundation v. Costle*, No. 1595, Docket No. 79-6202 (2d Cir. Aug. 24, 1981); *Matter of the Lehigh and New England Railway Company*, 657 F. 2d 570 (3d Cir. 1981); *United States v. Price*, Civil Action No. 80-4104 (D. N. J. September 23, 1981); *McCastle v. Rollins Environmental Services*, 514 F. Supp. 936 (M. D. La. 1981); *Illinois v. United States Army Corps of Engineers*, No. 79-C-5406 (N. D. Ill. E. D. July 20, 1981).

federal courts disappears." [24] In so doing, the court below has addressed Congressional displacement in the manner foreseen by the *Milwaukee* dissent but specifically refuted by the majority's opinion.[25]

The CORINTHOS limitation of liability action focused upon whether the CORINTHOS was unseaworthy because it was not equipped with an inert gas system. The district court concluded that the shipping industry's custom of not inerting "was insufficient to satisfy common law standards of care." [26] The district court followed the federal common law, or general maritime law,[27] standard of

24. *City of Milwaukee*, 101 S. Ct. at 1801.

25. "The dissent errs in labeling our approach 'automatic displacement'". *Id.*, 101 S. Ct. at 1791 n. 8.

26. *Complaint of Bankers Trust Co.*, 503 F. Supp. 337, 349; see A62-63. "The experts stated that an uninerted tanker which had discharged its cargo of crude has been likened to a floating time bomb . . . By inerting the tanks of crude cargo ships, the highly flammable condition does not develop." 503 F. Supp. at 349; A63.

Despite its finding the CORINTHOS unseaworthy, the district court held itself preempted from imposing liability because "Congress has entered this field of law" by enacting "legislation which sets forth the time frame for the retrofitting of varying size crude carriers with an inert gas system." 503 F. Supp. at 348-349; see A61-62. The preemptive legislation establishes the identical inerting requirement as was established in *Petition of Oskar Tiedemann and Co.* but delays the statute's effective date until 1983. See the Port and Tanker Safety Act of 1978, 46 U. S. C. § 391a(7)(F); see A137.

27. The general maritime law, or law at admiralty, is a particular species of federal common law. See *Texas Industries, Inc. v. Radcliff Materials, Inc.*, — U. S. —, 101 S. Ct. 2061, 2067 (1981).

Federal courts are empowered to evolve the general maritime law where Congress has not addressed an admiralty issue by statute. This power is historically rooted in the judicial grant of admiralty jurisdiction contained in Article III of the Constitution.

care which was established in *Petition of Oskar Tiedemann and Co.* [28]

The court of appeals reversed the district court in its finding of unseaworthiness.[29] The court held the CORINTHOS seaworthy as a matter of law because on the day of the collision it was in compliance with existing interna-

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27. (Cont'd.)

Waring v. Clarke, 5 How. 441, 457 (1847). For an account of the general maritime law's evolution from an area of judicial preeminence to one of legislative preeminence, see Note, *From Judicial Grant to Legislative Power: The Admiralty Clause in the Nineteenth Century*, 67 Harvard Law Review 1214 (1954).

28. 179 F. Supp. 227 (D. Del. 1959), *aff'd*, 289 F. 2d 237 (3d Cir. 1961). In *Tiedemann*, the MISSION SAN FRANCISCO, a tanker, collided with the ELNA, a cargo ship, while it traveled south in the Delaware River. Upon impact, the MISSION erupted in two explosions and broke in two, killing all its navigating officers. The explosions were caused by the dangerous level of gases remaining in the MISSION's tanks from its earlier discharge of jet fuel. The court of appeals affirmed the district court's conclusion "that there was negligence in which the owners and operators concurred in not having the available equipment . . . in order to gas free the MISSION." 289 F. 2d at 240. Moreover, the court of appeals held the industry-wide custom of not inerting tankers fell far below the standard of care demanded by the general maritime law. *Id.*

29. The court of appeals also held the preemption doctrine had been misapplied since "by definition, [the doctrine] delimits the relation between the federal legislature and the states." *Complaint of Bankers Trust Co.*, 651 F. 2d 160, 173 (3d Cir. 1981); see A27. The court of appeals was clearly rejecting the use of the state-federal preemption doctrine. It did not specifically articulate its opinion of the district court's holding as an application of Congressional displacement of the federal common law. The court of appeals mistakenly assumed the district court's use of the term "preemption" automatically invoked the "analysis used to decide the usual federal-state questions." See *City of Milwaukee*, 101 S. Ct. at 1791 n. 9.

tional treaties and United States legislation concerned with fire fighting and explosions.[30] It completely ignored the general maritime law applied by the district court and avoided any examination of Congress' intent with respect to that law. In holding the CORINTHOS seaworthy,[31] the court of appeals *de facto* preempted itself from considering the then-existing standard of care at admiralty and from formulating an appropriate standard of care at admiralty:

> Over the years a series of laws and regulations have been enacted with regard to tanker safety so as to phase in equipment requirements for ships. Congress has determined after considering many factors, including shipyard capacity and the available technology, that five years should be allowed before the retrofitting of tankers over 20,000 deadweight tons becomes mandatory. Were we to impose liability on vessels before this time period is up, the Congressional

30. *Complaint of Bankers Trust Co.*, 651 F. 2d at 175; see A30-A31. The court of appeals specifically found the CORINTHOS was in compliance with United States regulatory requirements, the fire fighting and anti-explosion provisions of the Safety of Life at Sea (SOLAS) Conventions of 1948 and 1960, and the CORINTHOS had been recognized by the American Bureau of Shipping (ABS) to be seaworthy. *Id.*

31. The court below gave lip service to the general rule that "industry standards and practices normally establish only minimal requirements, and do not create immunity from liability." *Complaint of Bankers Trust Company*, 651 F. 2d at 174; see A28. Nevertheless, the court of appeals refused to investigate the prudence and reasonableness of the industry's practice to not inert. See *The T. J. Hooper*, 60 F. 2d 737 (2d Cir.), *cert. denied*, 287 U. S. 662 (1932). The only circumstance which established the reasonableness of the industry practice was the postponed effective date of the 1978 Act.

> timetable would be rendered useless. Hence, in this instance, we will be guided by the federal legislation developed by Congress.[32]

The court of appeals' holding of *de facto* preemption directly conflicts with principles enunciated by this Court.

That the federal courts may alter, modify or even abolish the standard under the general maritime law is undisputed.[33] Nevertheless, when a federal court alters the federal common law in response to an act of Congress, it must ensure through prudent legal analysis that the only vacuum created in the general maritime law is one intended by Congress, so as to protect private parties and to maintain the interpretive power inherent in the federal judiciary.

The lower court's automatic displacement of the general maritime law creates a vacuum wherein private parties are left unprotected.[34] Where private parties were previously entitled to recover for damages from a shipowner's failure to inert a vessel,[35] the lower court has abolished the shipowner's duty at law, thereby leaving parties to the protection of the industry's custom and practice. This deprivation of a recognized right to recover for damages caused

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32. 651 F. 2d at 175; see A31.

33. See *Edmonds v. Compagnie Generale Transatlantique*, 443 U. S. 256, 259 (1979).

34. The absurdity of the court of appeals result is highlighted by the fact that both the general maritime law and the 1978 Act standard of care is the same, i.e. each requires tanker inerting. The lower court's decision has created a grace period of five years from 1978 to 1983 when a party, clearly liable both before and after this five year period, is granted temporary immunity.

35. The right to recover for such negligence was established in *Petition of Oskar Tiedemann and Co.* See note 28, *supra* at p. 10.

by violation of an existent standard of care under the general maritime law can now occur without any analysis designed as a safeguard to assure Congress intended this result.

Although this Court has recognized a distinction in the analysis required to find displacement by Congress of federal common law as opposed to preemption of an exercise of state powers, it is clear that an analysis of Congressional intent was never abandoned as a prerequisite.[36] When addressing the general maritime law or other federal common law, " 'we *start* with the assumption' that it is for Congress, not federal courts, to articulate the appropriate standards to be applied as a matter of federal law." [37] From that *starting* point, federal courts must analyze the displacing legislation to insure Congress did not intend to leave intact a remedy provided by the general maritime law.

The lower court never gets past the starting point. It interprets the presumption of Congressional supremacy as irrebuttable and not subject to further analysis. The lower court summarily relinquishes its judicial responsibility to establish federal common law without analysis of the appropriateness of such abandonment. In so doing, the lower court stands alone in its perception of the federal judiciary as unquestioning agents, responsive to unexamined directives from Congress.[38]

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36. This should be even more the case in admiralty due to the constitutional grant of admiralty jurisdiction in federal courts. See note 27, *supra* at p. 9.

37. *City of Milwaukee*, 101 S. Ct. at 1792. (Emphasis added).

38. In every instance of Congressional displacement of federal common law and in every instance of invocation of federal common law, federal courts have discerned Congress' intent with regard the viability of federal common law. See, e.g., *T. V. A. v.*

The decision of the court below threatens to destroy the viability of the federal common law.[39] By holding itself preempted by the 1978 Act, the court of appeals has placed the continued existence of federal common law subject to abolition by statutes which need not be actually found to address the matters subject to common law. Pursuant to the decision below, federal courts may ignore federal common law whenever federal legislation merely utters words related, in some unexamined manner, to the federal common law.

Thus the decision below repudiates a delicate process of examining Congressional intent mandated by this Court,[40] in favor of a reflex preemption analysis which erodes the federal judiciary's status as an equal branch of the federal government. This Court has assiduously avoided promulgating automatic rules for the preemption of federal common law.[41] As Justice Rhenquist observed, it is erroneous to label the approach toward federal common law preemption as "automatic displacement."[42] The

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38. (Cont'd.)

Hill, 437 U. S. 153 (1978); *Mobil Oil Corp. v. Higginbotham*, 436 U. S. 618 (1978); *Illinois v. City of Milwaukee*, 406 U. S. 91 (1972); *Wheeldin v. Wheeler*, 373 U. S. 647 (1963); *Board of County Commissioners v. United States*, 308 U. S. 343 (1939); *Texas v. Pankey*, 441 F. 2d 236 (10th Cir. 1971).

39. "[A]lthough federal courts will be called upon to invoke it infrequently, there *must* be 'federal judicial competence to declare the governing law in an area comprising issues substantially related to an established program of government operation'." *Miree v. DeKalb County, Georgia*, 433 U. S. 25, 35 (1977) (Burger, C. J., concurring). (Emphasis added).

40. *City of Milwaukee*, 101 S. Ct. at 1792-1800.

41. See *T. V. A. v. Hill*, 437 U. S. 153 (1978); *Mobil Oil Corp. v. Higginbotham*, 436 U. S. 618 (1978).

42. *City of Milwaukee*, 101 S. Ct. at 1791 n. 8.

effect of the decision below is a complete departure from the standards of analysis established in *City of Milwaukee.*

This issue is one to which this Court's attention is deserved. Delineation of the parameters of Congressional preemption of federal common law requires judgment respecting the role of the federal judiciary which only this Court is equipped to provide.

II. The Decision Below Conflicts With a Decision of This Court as to When a Federal Statute Preempts and/or Displaces General Maritime Law and Presents an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court; Namely, Must a Federal Statute Which Does Not Address Private Rights in Tort Cut Off Existing Rights at Law Without Express or Implied Congressional Intent?

City of Milwaukee v. Illinois and Michigan[43] requires that before an area of federal common law may be displaced, the scheme established by Congress must be examined to determine whether or not it addresses that area of common law.[44] In *City of Milwaukee,* this Court recognized that the comprehensive regulatory scheme established by Congress to abate water pollution displaced the federal common law cause of action for nuisance.[45] This displacement resulted because Congress had im-

43. — U. S. —, 101 S. Ct. 1784 (1981).

44. *Id.* at 1791, n. 8.

45. In *City of Milwaukee,* "[t]he Court . . . held that the federal common law of nuisance in the area of water pollution is entirely preempted by the more comprehensive scope of the FWPCA [Federal Water Pollution Control Act]." *Middlesex County Sewage Authority v. National Sea Clammers Association,* — U. S. —, 101 S. Ct. 2615, 2627 (1981).

plicitly indicated its intent to displace through "establishment of . . . a self-consciously comprehensive program."[46]

In *City of Milwaukee*, the comprehensive administrative scheme provided opportunity for an aggrieved party to present its claim that particular discharges affected its waters. "The statutory scheme established by Congress provides a forum for the pursuit of such claims before expert agencies by means of the permit granting process."[47] Furthermore, disputes between private parties are addressed and explicitly provided for in the statutory scheme.[48]

No such comprehensive statutory scheme is to be found in the 1978 Act addressed by this petition. More importantly, no effort was expended by the court below to examine the 1978 Act to determine if such a scheme existed. As a result, the decision of the court of appeals directly conflicts with this Court as to when federal common law frustrates the intent of Congress. The court below held the imposition of the general maritime law's inerting standard would render the timetable established in the 1978 Act "useless".[49] The lower court's decision displaced the general maritime law even though the dis-

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46. *City of Milwaukee*, 101 S. Ct. at 1793.

47. *Id.*, 101 S. Ct. at 1797.

48. In *Middlesex County*, this court held the FWPCA specifically allowed suits by private parties, thereby preempting any implied federal common law action. The Act limited recovery to prospective relief and imposed notice requirements upon injured private parties, but nevertheless clearly made provision for private parties to seek relief. 101 S. Ct. at 2623.

49. *Complaint of Bankers Trust Co.*, 651 F. 2d 160, 175; see A31.

placing statutory scheme does not address the question previously governed by federal common law.[50]

The lower court held the existing maritime standard for private tort recovery would contravene the 1978 Act despite the Act's failure to address even tangentially the subject area governed by the general maritime law.[51] In at least five major aspects, the 1978 Act fails to address tanker safety in the same manner as the FWPCA addressed water pollution:

1. The 1978 Act does not prescribe any standards to be applied in suits for recovery between private parties for tortious conduct;

2. The 1978 Act does not compensate private parties, to any extent, for damages incurred as a result of violations of the standards established therein;

3. The 1978 Act does not provide grounds for private parties to recover for damages where previously federal common law provided such grounds;

4. The 1978 Act does not provide for citizen enforcement of the construction standards established therein;

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50. The general maritime law provides a right of recovery for those injured by the explosion of uninerted tankers. See note 28, *supra* at p. 10. The statute merely provides a scheme whereby the federal government may enforce inerting standards by fine or injunction. No mention of private rights and remedies is contained in the statute.

51. The 1978 Act was enacted to correct perceived deficiencies in the Port and Waterways Safety Act of 1972, Pub. L. No. 92-340, 86 Stat. 424; see A91. Even if the Port and Waterways Safety Act and the 1978 Act are analyzed as the communion of Congress's efforts to regulate tanker safety, the legislation does not address the subject governed by the general maritime law.

5. The 1978 Act does not provide for the establishment of standards less stringent than existing general maritime law.[52]

The 1978 Act is comprehensive within its scope, but its scope is not all-encompassing.[53]

The lower court's decision equates the regulatory effect of an administrative statute with the regulatory effect of potential tort liability.[54] Presuming this erroneous equation, potential tort liability under the general maritime law will be summarily preempted in every instance where Congress enters the sphere of conduct and regulates activity in any manner.

As a result of the lower court's decision, the federal common law is left dangling like a string from a balloon-

52. This interrelation of the general maritime law and the 1978 Act will never present the problem raised in *New England Legal Foundation v. Costle*, No. 1595, Docket No. 79-6202, slip op. at 7034-7035 (2d Cir. August 24, 1981). There the Second Circuit Court of Appeals considered the interplay of the Clean Air Act and the federal common law of nuisance. The court was reluctant to enjoin as a public nuisance activity which had been considered and specifically authorized by the government.

In the instant case, the 1978 Act sets a standard identical to the general maritime law, thereby rendering such a conflict impossible.

53. *Chevron U. S. A. v. Hammond*, 1980 A. M. C. 2416, 2427 (D. Alaska 1979).

54. Liability for negligence does not regulate conduct in any absolute sense. The general maritime law does not deny waterway admittance to non-inerted vessels. Neither does the general maritime law categorically impose any liability upon vessels without inerting systems. Instead, the general maritime law provides that shipowners which operate vessels in violation of the general maritime law standard of care do so at the risk of being held liable for losses proximately caused by the violation. If an uninerted vessel enters and leaves a port without causing harm, the common law imposes no penalty.

like sphere of related conduct: Once Congress pierces the sphere of conduct, the balloon bursts, and the federal common law standard for recovery falls. Besides achieving results unintended by Congress, such reasoning leaves private parties protected solely by the federal statute. In the case of the 1978 Act, whose penalties are limited to criminal and civil fines of $50,000, private parties have no remedy at law and are placed at the short end of the cost-benefit analyses of the industry.

The adverse impact of this decision on the vitality of federal common law is clear. Further the lower court's automatic displacement constitutes the sort of departure from established practice and precedent which should not stand unless sanctioned by this Court.

CONCLUSION

Bankers Trust Company, et al., respectfully prays the Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Appendix.

APPENDIX

Opinion of the United States Court of Appeals for the Third Circuit, In the Matter of: The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability and Villaneuva Compania Naviera S.A., Amoco Overseas Oil Company and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company and The William Powell Company, Third-Party Defendants; Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1405 and Cross-Appellees, No. 80-1450 and No. 80-1496 and In the Matter of Complaint of Villaneuva Compania Naviera, S.A., Owner of the Tank Vessel CORINTHOS, for Exoneration From and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants, British Petroleum, Ltd.; B.P. Oil Inc. and Sohio Petroleum Company, Third-Party Defendants, Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1494 and Cross-Appellees, No. 80-1495 and No. 80-1497, Filed May 15, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-1405, 80-1450, 80-1496

In the Matter of:

The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability

and

VILLANEUVA COMPANIA NAVIERA, S.A., AMOCO OVERSEAS OIL COMPANY and AMOCO TRANSPORT COMPANY,

Third-Party Plaintiffs,

v.

BETHLEHEM STEEL CORPORATION, GENERAL ELECTRIC COMPANY and THE WILLIAM POWELL COMPANY,

Third-Party Defendants

Bankers Trust Company, Monsanto Company and Keystone Shipping Co.,

Appellants at No. 80-1405

BP Oil Inc. and SOHIO Petroleum Company, Claimants,

Appellants at No. 80-1450

Villaneuva Compania Naviera, SA.,

Appellants at No. 80-1496

(D. C. Civil No. 75-0364)

Nos. 80-1494, 80-1495, 80-1497

In the Matter of:

Complaint of VILLANEUVA COMPANIA NAVERIA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability

ROYAL GLOBE INSURANCE COMPANY,
Intervenor Pltf.

NATIONAL GRANGE MUTUAL INSURANCE COMPANY and INSURANCE COMPANY OF NORTH AMERICA

v.

BETHLEHEM STEEL CORPORATION and GENERAL ELECTRIC COMPANY and THE WILLIAM POWELL COMPANY,
Third-Party Defts.

BRITISH PETROLEUM, LTD.; B.P. OIL INC. and SOHIO PETROLEUM COMPANY,
Third-Party Defts.

Bankers Trust Company, Monsanto Company and Keystone Shipping Co.,
Appellants at No. 80-1494

BP OIL INC. and
SOHIO Petroleum Company, Claimants,
Appellants at No. 80-1495

Villaneuva Compania Naviera, S.A.,
Appellant at No. 80-1497

(D.C. Civil No. 75-2110)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued January 13, 1981

Before: WEIS and HIGGINBOTHAM, *Circuit Judges*, and DEBEVOISE, *District Judge* *

(Filed May 15, 1981)

JAMES F. YOUNG (argued)
THOMAS FISHER, III (argued)
Counsel for Bankers Trust Company, Monsanto Company, Keystone Shipping Co., Appellants in No. 80-1405 and 80-1494 and as cross-appellees in No. 80-1450 and No. 80-1450 and Nos. 80-1495/96/97

RICHARD W. PALMER (argued)
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EDWARD V. CATTELL, JR.
Counsel for BP Oil Inc. and Sohio Petroleum Company, Inc., Appellees in Nos. 80-1405, 80-1494, 80-1496/97 and as cross-appellants in Nos. 80-1450 and 80-1495

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* Honorable Dickinson R. Debevoise, United States District Court for the District of New Jersey, sitting by designation.

OPINION OF THE COURT

A. LEON HIGGINBOTHAM, JR., *Circuit Judge.*

This action is the result of a collision that occurred early on the morning of January 31, 1975 on the Delaware River in Marcus Hook, Pennsylvania. The collision took place when the chemical carrier S.S. EDGAR M. QUEENY (QUEENY), an American steamship, struck the crude oil tanker S.T. CORINTHOS (CORINTHOS), a Liberian steam tanker (owned and operated by Villaneuva Compania Naviera S.A. (Villaneuva)), as the CORINTHOS discharged a cargo of crude oil at the B.P. Oil Inc./Sohio Petroleum Company Terminal (BP/Sohio).[1] It resulted in the loss of 26 lives as well as other personal injuries, extensive damage to the terminal, the destruction of the CORINTHOS, oil pollution in the Delaware River, minor damage to the QUEENY, and damage to neighboring properties. The owners and operators of each vessel subsequently brought suit in admiralty, claiming that the other vessel was exclusively at fault and that they should be exonerated from liability or, in the alternative, that their liability should be limited.

The issues on appeal concern whether the district court erred with respect to the following: first, its denial of the petitions for limitation of liability filed by the owners and operators of the QUEENY (Bankers Trust Company (Bankers Trust), Monsanto Company (Monsanto) and Keystone Shipping Company (Keystone) (collectively the QUEENY INTERESTS)); and, secondly, its ruling that under the preemption doctrine, federal legislation precluded it from holding the owners and operators of either the CORINTHOS or BP/Sohio liable. We will

1. Sohio Petroleum Company is the owner/lessor of a pier and refinery facility at Marcus Hook, Pennsylvania. B.P. Oil, Inc. is the operator/lessee of the facility.

reverse each of those holdings. We find that Keystone's management was not privy to the cause of the accident and that the district court was not preempted from considering the liability of the CORINTHOS and BP Sohio. Moreover, we rule that the alternative finding of the trial court that the CORINTHOS was unseaworthy was in error.[2]

I.

The parties have saturated us with thousands of pages of transcript, hundreds of exhibits, a plethora of expert testimony and extensive briefs. This inundation of evidence may have been necessary for the trial court to make proper findings, but a landlubber's analogy might be more appropriate to put this case in context.

Every novice automobile driver knows that, by the laws of physics, when one seeks to make a U-turn in a small area where the space is less than the circumference required for the full turning arc of the car, the turn can be successfully maneuvered only with a series of forward and backward motions. On a river, where the area is not wide enough for a turn in one maneuver, a 180

2. The parties have attempted to raise on appeal other issues related to findings made by the trial judge, with regard to the liability of BP/Sohio. Those issues are not before us, however, because the trial judge's order did not cover them, and, accordingly there is no final decree for purposes of either 28 U.S.C. § 1291 or 28 U.S.C. § 1292(a)(3). In his order of February 19, 1980, the trial judge dealt only with the petitions for exoneration and limitation of liability filed by Keystone and Villaneuva and not those filed by BP/Sohio. There has been no rule 54b certification pursuant to the Federal Rules of Civil Procedure as to these claims, and no interlocutory decree in admiralty on the record pursuant to 28 U.S.C. § 1292(a)(3). Therefore, there is no appellate jurisdiction for these matters because they are not specifically covered by the formal order of February 19, 1980. See p. A32 *infra*.

degree turning process is an even more complex maneuver. The "roadbed" of the ship moves with the momentum of the tide. Ships have no brakes which can keep an unanchored vessel at a permanent standstill so as to avoid drifting and possible collisions. Thus, even an experienced captain of a ship must rely on professional pilots whose function on the ship is to aid the captain in making intricate turns, maneuvers and docking. In nautical terminology, we say that the pilot conns [3] the vessel. Tugs are also often used to assist him in this process.

The instant case arises because in the process of making a 180 degree turn on the Delaware River, the purportedly experienced pilot of the QUEENY who conned the vessel made tragic errors of judgment. He failed to back and fill [4] enough and to use efficiently the tug that was assisting him in the turn.

Clearly the collision was attributable primarily to the pilot's and the captain's negligence in executing the 180° turn. On this appeal, the parties have not questioned the trial court's finding that the collision was also caused in part by the failure of the owners to correct a purportedly defective astern guardian valve—a vital component of the ship's engine mechanism. The question we must consider is whether the owners have privity or knowledge of this deficiency in the valve.

II. FACTS

The QUEENY is a single screw, steam powered tank vessel of 19,046 gross tons. It is 660.2 feet in length, 90 feet in breadth, and powered by a 15,000 horsepower

3. Conn is a term that refers to the control exercised by one who guides or directs the movements of a ship.

4. Backing and filling is a maneuver used when a ship has to make a difficult turn.

steam turbine. It was designed and built during the late 1960's as a multiproduct chemical tanker by the Bethlehem Steel Corporation (Bethlehem) for Monsanto and it was delivered to Keystone as an operator in September of 1970. Pursuant to a subcontract with Bethlehem, its turbine set and controls were supplied by the General Electric Company (GE). GE subcontracted with the William Powell Company (Powell) for the manufacture of a marine astern guardian valve—a valve to be used in the turbine. As will be noted later, the functioning of this valve is of great importance in this litigation.

The CORINTHOS was a single screw, steam powered tank vessel of 30,705 gross tons. It was 723.7 feet in length, 106 feet in breadth and powered by a 17,000 horsepower steam turbine. On January 30, 1975, the CORINTHOS was moored at the BP/Sohio refinery dock on the Delaware River where it was discharging a cargo of crude oil. Across the river, the QUEENY was moored in Bridgeport, New Jersey in order to discharge part of its cargo.

On January 31, 1975, the QUEENY left port headed for the next discharge facility in Paulsboro, New Jersey. She was under the command of Captain Fay Kellog. Pilot Sverre Sorenson was at the conn of the ship. Both Captain Kellog and Pilot Sorenson had performed docking and undocking maneuvers on many occasions aboard the QUEENY. To proceed upstream to the next facility, they knew she had to make a 180° starboard turn. Visability was clear from eight to ten miles. The eastern half of the Marcus Hook channel was closed for dredging operations —reducing the channel width from its standard 800 feet to 400 feet and, therefore, making turning in the river considerably more difficult.

The captain and pilot were on the bridge at the time of the undocking maneuver. To undock, the QUEENY

used its main engine and bow thruster, and its rudder was hard left. The Tug Tanda 12, which had been engaged to help with the undocking, was located on the port bow. Pilot Sorenson was at the Conn and in radio communication with the tug.

When the vessel had cleared the dock, the QUEENY began backing and filling. To do this, it used a series of astern and ahead maneuvers in conjunction with the vessel's rudder, the bow thruster, and the tugboat. This facilitated the starboard turn of the vessel and positioned her to go upstream. Both the captain and pilot knew the eastern half of the channel was closed.

To assist in the turning maneuver, at the early stages, the Tug Tanda 12 pushed at the QUEENY'S port bow. Before the attempt to turn was completed, the QUEENY backed and filled at least twice to prepare for it. Tug Tanda 12 was then released from the port bow and instructed to stand by in Paulsboro, New Jersey. Captain Kellog was on the starboard wing of the bridge and Pilot Sorenson was on the port wing.

When the tug was released the vessel's capacity to turn dramatically decreased, but Captain Kellog was not alarmed. He expected Pilot Sorenson to make additional back and fill maneuvers as he had done on many other occasions in similar situations. The QUEENY's forward acceleration, however, actually increased and, consequently, the captain grew apprehensive, feeling that the QUEENY might not clear the CORINTHOS due to the pilot's failure to continue to back and fill. He voiced his concern about the "closeness" of the situation, but the pilot replied, "Captain, she should make that o.k." Later, Captain Kellog again voiced his concern stating that they should go astern because they would be very close on the maneuver. When Pilot Sorenson did not respond, Captain

Kellogg became quite alarmed about the proximity of the QUEENY to the well lighted CORINTHOS and he gave a "full astern" order. The third mate rung up the order on the engine telegraph. It was promptly acknowledged and then executed by the first assistant engineer. Then, Pilot Sorenson ordered a "double jingle." This order was received and promptly acknowledged by the engine room, but it had no effect on the operation of the engines because the first assistant engineer had already opened the throttles as far as he felt they safely could be opened. Accordingly, the rate of the QUEENY's turn to the right was reduced as the propellor responded to the full astern order.

The bow of the QUEENY continued to ease closer to the CORINTHOS, and the pilot, as a result, recommended that the starboard anchor be dropped. It seems that Captain Kellog acquiesced to this recommendation, because he ordered it via his walkie-talkie. No response to Captain Kellog's order was received, however, because the bow lookout, Arvie Harris, stationed at the windlass anchor watch position, had fled the extreme bow in the face of the impending collision.

Shortly thereafter the QUEENY crashed into the CORINTHOS. The initial contact produced sparks as the two ships scraped one another. The shock of this contact caused both ships to roll and pitch, and the vessels collided intermittently. The port fluke anchor of the QUEENY punctured the port shell plating of the CORINTHOS's No. 4 and/or No. 5 cargo tanks, resulting in a series of explosions and then a fire.

The fires and explosions aboard the CORINTHOS were out of control throughout the early morning hours of January 31, 1975, and caused the ship to break in half and sink, which resulted in extensive damage to the dock, oil pollution in the Delaware River, damage to neighbor-

ing properties, and the loss of 26 lives as well as other personal injuries.[5]

Keystone, the owners and operators of the QUEENY, and Villaneuva filed petitions for exoneration from or limitation of liability, Civil Action Nos. 75-364 and 75-2110, pursuant to the Limitations of Liability Act, 46 U.S.C. § 183 *et seq.* This act, in pertinent part, provides as follows:

> The liability of the owner of any vessel . . . for any . . . loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done occasioned or incurred, without the privity or knowledge of such owner or owners, shall not . . . exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

46 U.S.C. § 183(a). Keystone and Villaneuva were damage claimants in each other's limitation proceeding, along with all those who suffered injury or loss.

On the second day of trial, the attorney for Keystone wisely admitted that his client no longer sought exoneration but merely pressed for the limitation of his liability. The district court, sitting without a jury, examined the

5. Several proceedings were instituted relating to this accident. The personal injury and wrongful death actions were settled and dismissed. BP/Sohio filed a products liability action against Bethlehem, GE, and Powell. *See* D.C.Civ.No. 77-2362. The defendants in that suit all have been involved, in one way or another, in designing and constructing the QUEENY, her astern guardian valve and her turbine set and controls. At trial, that action was severed and stayed pending the resolution of the limitation actions. The suit by BP/Sohio against Villaneuva, the owners and operators of the CORINTHOS, was also severed. *See* D.C.Civ.No. 75-1285.

issues raised in the limitation of liability petitions and the contrary claims made by the three major parties. The issue of damages was bifurcated with respect to the question of liability. In a memorandum opinion dated February 19, 1980, the trial court ruled that Keystone's petition for limitation of liability would be denied, and that Villaneuva's petition for exoneration from and limitation of liability would be granted.

III. KEYSTONE'S PETITION TO LIMIT ITS LIABILITY

Since March 3, 1851, federal legislation, under certain circumstances, has permitted a shipowner to limit his liability to the value of the specific ship involved in an accident.[6] Thus, "even where a ship or fleet of ships is owned by a corporation, the privilege of limitation will insulate the remaining corporate assets from claims to which they would otherwise be subject." *See* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY, 818 (2d ed. 1975) (GILMORE & BLACK). Many assert, as the QUEENY INTERESTS have, that the purpose of the limitation act is to promote competitive United States shipping by reasonably fixing investors' liability to the value of the vessel placed in trade and that "the Act was passed to encourage investment at a time when American shipping was struggling to become commercially competitive and that [that] condition is just as valid in the United States today as it was . . . when the Act became law." Bankers Trust brief at 12.[7] Others assert

6. The Limitation of Liability Act, Chap. XLIII, Thirty-First Cong. Sess. 11 Mar. 12, 1851, 9 Stat. 635 (1851), 9 Stat. 635 (1851), (codified at 46 U.S.C. §§ 181-189.)

7. Professors Gilmore & Black observe as follows:

Senator Hamlin of Maine, Chairman of the Senate Committee on Commerce, who introduced the bill, presented it as merely

that "[s]ince approximately 1930 the early enthusiasm, both legislative and judicial, for the limitation principal has cooled." GILMORE & BLACK at 821.[8]

Whatever may be the long term trend, in this case, as in most major calamaties, high stakes are involved in the granting or rejecting of Keystone's petitions for limitation of liability. Keystone placed a fund of $11,169,501 in the court representing the limitation value of the QUEENY while claims at that time were well above $40 million.

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7. (Cont'd.)

an adoption of English legislation: "Why not give to those who navigate the ocean as many inducements to do so as England has done? . . . That is what this bill seeks to do, and it asks no more." Of the heart of the bill, sections three and four, he said: "These two sections are substantially the English law." Sen. Rantoul of Massachusetts was willing to give even greater assurance: "They (the British) have made the alteration which we are now asked to make, and they have carried it further than this section of the bill carries it." Sen. Davis, from the same state, said: "It is simply placing our mercantile marine upon the same footing as that of Great Britain." 23 Cong. Globe 331-332, 713-720, 776-777. 31st Cong., 2d Sess. (Jan. 25, Feb. 26, March 3, 1851).

GILMORE & BLACK at 819 n. 5.

8. Professors Gilmore & Black have suggested as follows:

There is at least some reason to believe that the judicial attitude in the second half of the twentieth century will be on the whole hostile to the limitation idea, that the early cases will be whittled down if they are not flatly overruled, that the statute, even without further limiting amendments, will be narrowly and not expansively construed. Such an attitude reflects, it is suggested, not so much hostility to the shipping industry, as a recognition of the fact that the Limitation Act, passed in the era before the corporation had become the standard form of business organization and before present forms of insurance protection (such as Protection and Indemnity insurance) were available, shows increasing signs of economic obsolescence.

GILMORE & BLACK at 822.

In support of its limitation of liability argument, Keystone asserts that the accident was caused solely by the negligent navigation of the QUEENY by Captain Kellog and Pilot Sorenson; that Keystone was without privity or knowledge of these negligent acts; and that, as a consequence, Keystone is entitled to limit its liability to the value of the vessel and freight on the ship at the time of the accident.

Villaneuva and BP/Sohio contend that Keystone is not entitled to have its liability limited because the QUEENY was unseaworthy and that its unseaworthy condition was a contributing cause of the collision. They maintain that the astern turbine on board the QUEENY was defective, and that it prevented the QUEENY from obtaining her full rated backing power prior to the accident. They submit that had the astern turbine functioned properly the QUEENY, notwithstanding the negligent acts of the captain and pilot, would have been able to avoid the collision with the CORINTHOS.

The district court found that the QUEENY's astern guardian valve and astern turbine were defective on the night of the accident and that these defective conditions were a contributing cause of the tragic collision. It ruled that Keystone should have known of this defective condition and held them in privity. Hence, it denied Keystone's petition for limitation of liability.

IV. THE RELATIONSHIP OF THE ASTERN GUARDIAN VALVE TO THE ASTERN TURBINE

Benjamin Franklin once wrote:

For the want of a nail the shoe was lost,
For the want of a shoe the horse was lost,
For the want of a horse the rider was lost,
For the want of a rider the battle was lost,
For the want of a battle the kingdom was lost—
And all for the want of a horseshoe nail.

Similarly many of the parties assert that for the want of a proper functioning astern guardian valve the collision was caused.

Physically, the astern guardian valve is located on the main steam line just outside the steam inlet to the astern element of a low pressure turbine. It is the last valve the steam passes through before it enters the astern turbine. Its purpose is to protect the astern turbine from an accidental opening of the astern throttle valve when the turbine is turning forward RPM.[9] When the valve is open steam passes into the astern turbine and reverses the engine. If steam were accidentally released into the astern turbine while the turbine operated at full speed ahead, it would be seriously damaged.

The valve itself is a disc 5″ in diameter and 6″ high attached to the end of a stem. As the stem is raised or lowered (by a motor or handwheel), it moves up and down inside the valve body. The disc's bearing surfaces, which touch the valve body, are called guide surfaces. At normal room temperature, the clearances between the guide surfaces and valve body are 10-12/1,000ths of an inch. In this case, the disc and valve body were manufactured with the same material (ASTM-2176 grade WC6) (cast steel). Neither was treated to obtain differing degrees of hardness.

The valve operates when steam enters an inlet on its side and exits through a hole in its bottom. As the disc moves up and down, it is kept in position by the guide surfaces which come into contact with the valve's body. The stem obviously does not prevent contact between the valve's disc and body. It simply moves the disc up and down.

The valve's defect was caused by the galling or gouging of its surface due to the rubbing of two metal castings

9. RPM refers to revolutions per minute.

manufactured from the same grade of steel. This rubbing caused the surfaces to weld together, and, consequently, broke off pieces of the metal surfaces. This 'chiseling effect' allowed the steam in the valve to project pieces of metal into the astern turbine where they damaged the turbine's blades. This damage reduced the QUEENY's astern power. Thus, when Captain Kellog ordered full astern, the QUEENY's engines were unable to respond with its former full power.

The QUEENY's turbines were designed for normal sea use. They were guaranteed to produce an astern RPM equivalent to 70% of 109. If undamaged, therefore, they should have responded to the full astern command by producing 76.3 RPM. In fact, on the QUEENY's sea trial run, they reached 76 RPM. On the day of the accident, however, they were unable to produce the guaranteed level of astern RPM. Hence, the court below found the QUEENY unseaworthy, and ruled that had the astern turbine functioned properly the collision between the QUEENY and the CORINTHOS would not have occurred.[10]

V. THE VALVE INCIDENT AND ITS LEGAL CONSEQUENCES

In reviewing the district court's finding of liability, the critical question we must address is whether the QUEENY INTERESTS had knowledge and privity of any defect in the astern guardian valve. Even if it is conceded that the valve was defective and that the collision was

10. The trial court adopted the CORINTHOS' extensive proposed finding of fact No. 87, which reads in part:

> If the vessel had achieved 76 RPM's astern on the night of the collision with an undamaged turbine and the RPM's were recorded on the night of the collision, there would have been no collision. (C-343, Line 5).

caused by the valve's defect, this alone does not constitute a basis to deny the QUEENY INTEREST'S petition to limit their liability. To constitute a per se basis to deny their petition, they must have had knowledge and privity of the valve's defect.

The statute provides that the owners' liability shall be limited to the "value of the interest" of the "vessel and her freight" for any act which occurs "without the privity or knowledge" of the owner. 46 U.S.C. § 183(a). In this case, therefore, the magic words are "privity or knowledge," for a shipowner is responsible for unseaworthiness of his vessel only if he has knowledge, or, in the use of ordinary care, should have knowledge of that condition. *Spencer Kellog & Sons, Inc. v. Hicks,* 285 U.S. 502 (1932); *Gibboney v. Wright,* 517 F.2d 1054 (5th Cir. 1975); *Waterman Steamship Corp. v. Gay Cottons,* 414 F.2d 724 (9th Cir. 1969); *China Union Lines, Ltd. v. A. O. Andersen & Co.,* 364 F.2d 769 (5th Cir. 1966), *cert. denied,* 386 U.S. 933 (1967); *The Cleveco,* 154 F.2d 605 (6th Cir. 1946).

In this respect, corporate shipowners, are held liable for the acts or knowledge of managing officers or supervisory employees. *Coryell v. Phillips,* 317 U.S. 406, 410-412 (1943); *Avera v. Florida Towing Corporation,* 322 F.2d 155 (5th Cir. 1963); *Complaint of Allied Towing Corp.,* 409 F.Supp. 180, 188 (E.D.Va. 1976), *aff'd,* 580 F.2d 792 (4th Cir. 1978). Usually, however, they will not be held liable for the actions of crew members in the navigation or operation of the ship at sea. *In re Black Sea Steamship Company,* 382 F. Supp. 907, 911 (D.C. Canal Zone 1974). To hold Keystone privy, therefore, the evidence must show that some individuals at the management level of Keystone had, or should have had, knowledge of the QUEENY's damaged astern guardian valve. BP/Sohio and the CORINTHOS bear the burden of proving negligence or unseaworthiness. Keystone, on the other hand,

must demonstrate a lack of knowledge or privity to show that it is entitled to have its liability limited. *Farrell Lines, Inc. v. Jones*, 530 F.2d 7, 10 (5th Cir. 1976).[11]

Under these precepts of law, what were the facts in this case which would justify the trial courts finding of privity or knowledge?

VI. THE TRIAL COURT'S FINDINGS

The district court found that the QUEENY's astern guardian valve and astern turbine were defective on the night of the accident and that this defective condition was a contributing cause of the tragic collision. It ruled that Keystone should have known of this defective condition and held them in privity. Thus, it denied Keystone's petition for limitation of liability.

The court below based its conclusion of privity and knowledge on the following findings. First, on or about

11. In the lower court, BP/Sohio argued that there were numerous contributing causes to the collision: (1) the failure of Keystone's management to use due diligence to discover and remedy the damage to the astern turbine which reduced the QUEENY's astern power by 40% and rendered her unseaworthy; (2) Keystone's decision to give the captain the discretion to ignore company instructions to require an anchor watch to maneuver in congested waters—a decision that made it impossible to drop the anchors (which might have prevented the collision); and (3) the pressure placed on Keystone by Monsanto to cut costs which resulted in the failure to use bridge control and the premature relief of the bow detail without the posting of an anchor detail.

The CORINTHOS raised these same points. They also alleged that Keystone (1) failed to instruct the QUEENY's master and officers to use tugs during starboard turning maneuvers in confined or restricted waters; (2) failed to inform the QUEENY's captain and officers that the bow thruster power had been increased by the shipbuilder from 1200 to 1600 amps; and (3) failed to find out why the captain refused to perform a crash stop test and believed such a test would damage the vessel's propulsion system.

September 14, 1970, more than four years before this accident and not long after the QUEENY had been delivered by Bethlehem, problems developed with the QUEENY's astern guardian valve. The court held that Keystone had notice of these problems. Second, the court ruled that Keystone would have discovered the defect in the astern turbine had it examined the RPM logger tapes. Third, it found that, in 1973, Keystone was negligent because it failed to determine the cause of the turbine damage on a sister ship of the QUEENY, and relate this information to the earlier problem with the QUEENY's valve. Finally, the court held that the QUEENY INTERESTS had a duty to follow-up on Captain Kellog's March 12, 1972 letter which purportedly revealed concerns about defects to the turbine. These findings of the trial court, of course, must be measured by the traditional standard in admiralty that they will not be set aside unless clearly erroneous. Fed. R. Civ. P. 52(a); *see McAllister v. United States*, 348 U.S. 19, 20 (1954); *SS Amazonia v. New Jersey Export Marine Carpenters, Inc.*, 564 F.2d 5 (2d Cir. 1977).

A. The Advantages of Hindsight

There is no vision which is as clear as hindsight. Images come into almost perfect focus through the evidentiary microscope of a lawyer's hindsight. After thousands of daily and weekly occurrences of maritime life are discarded, the lawyer can isolate a few incidents for examination with such a microscope to document things such as privity or knowledge. This process proceeds as if a reasonable person had no other responsibilities or phenomena or events to observe other than those incidents now carefully isolated and focused on through this hindsight perspective. If life were so simple, foreseeability under the law would be the equivalent of omniscience.

We feel that the appellees in this case have built such a hindsight microscope slide—one that is patently divorced from reality. Scattered and isolated items taken out of context were presented to the court, and, surprisingly, the trial judge found a nexus of interrelationships to establish privity and knowledge. These findings defy the realities of life—even when recognizing a shipowner's undelegable obligation to correct equipment that is *known* to be defective. The most significant gap which the trial judge failed to appreciate involved a four-and-a-half year span during which appellants at no time had any realistic notice that the astern guardian valve on the QUEENY was functionally defective.

B. The Maiden Voyage

The QUEENY's maiden voyage was made in September of 1970 when, shortly after it was delivered, it traveled from Baltimore to Texas. On that voyage, the astern guardian valve malfunctioned when it either stuck or jammed in the closed position. When this happened, it became impossible for the steam to pass through to the astern turbine.

The valve usually is automatically operated by the limitorque motor—a motor that provides torque to open or close it. This motor could not move the valve on the QUEENY's initial voyage. Each attempt to do so overloaded the electrical circuit and tripped the circuit breaker. The valve, however, was equipped with a handwheel that could be used to operate it manually. The QUEENY'S first assistant engineer, Michael Breton, attempted to turn the handwheel after the malfunction. But he was unable to do so. Breton and Bethlehem's operating engineer, John Jensen, later were able to free the handwheel. They used a wrench (called a "cheater")

to give them extra leverage so as to apply excessive force to the handwheel to open the valve.

The instruction manual for the astern guardian valve observes that a "cheater" must never be used on the handwheel. Furthermore, it states as follows:

> Excessive handwheel effort can indicate the following:
>
> (1) improperly lubricated or damaged valve stem; (2) valve packing gland too tight; (3) improperly lubricated valve; (4) stem nut too tight on valve stem; (5) faulty or damaged valve parts.

Breton and Jensen, however, simply reset the limitorque circuitry to allow the valve to open and shut without further investigating what had caused the initial problem.

The QUEENY INTERESTS were informed of the problems with the valve on September 14, 1970, when the technical assistant to the vice president of Keystone, Samuel Spencer, sent an internal memo to Keystone's president, Adolph B. Kurz. Spencer also notified the Chief Guarantee Engineer, E. L. Insley, at Bethlehem, and Bethlehem listed the valve as an item for repair at the guarantee yard dry docking.

Bethlehem's "guarantee agreement" with Keystone required it to repair or replace any part or system on board the QUEENY that malfunctioned for reasons attributable to the builder. Vessel personnel were to notify both QUEENY management and the builder promptly when guarantee items needed to be repaired. Hence, on September 15, 1970, the day after Keystone learned that the astern guardian valve was sticking, it notified the proper Bethlehem representative of the problem. A Bethlehem Guarantee Engineer, Mr. McKendrick, met the QUEENY at her first northern port of call on September

20, 1970. On September 21, 1970, he reported that the valve was operating properly. At that time, therefore, Keystone had every reason to believe the valve was in working order because Bethlehem reported that it worked properly within only six days of notice of the problem.

The trial court held that the cause of the jamming and sticking of the valve in 1970 was not properly investigated, and that Keystone should have insisted on an inspection of the valve and turbine during the guarantee repair period. Yet, Keystone was told by the experts—Bethlehem, the company which built the ship—that the valve had been fixed, and for the next four-and-a-half years subsequent to this statement, it seemed to perform properly. Under these circumstances, the shipowner should not have been obligated to insist upon an inspection of the valve and turbine during the guarantee period. It makes no more sense to impose such a duty on a shipowner than it would to require a taxicab company to take a transmission apart on its new cab when the car's manufacturer had advised them that the new cab's transmission had been repaired and it worked properly after the original repair.

It is, of course, well settled that a shipowner has a duty to use reasonable means to acquire knowledge calculated to inform him of conditions likely to produce or contribute to unseaworthiness. He must create reasonable procedures for identifying the need for repairs, and relaying reports of ship conditions to shoreside management. *See ARGENT*, 1940, A.M.C. 508 (S.D.N.Y. 1915). He must also enforce employee compliance with those procedures, *The Pennsylvania v. Troop*, 86 U.S. (19 Wall.) 125 (1873); *Avera v. Florida Towing Corporation*, 322 F.2d 155 (5th Cir. 1963). Finally, he must use those procedures to keep abreast of ship conditions. *Spencer Kellog & Sons, Inc. v. Hicks*, 285 U.S. 502 (1932); *Com-*

plaint of Allied Towing Corp., 409 F.Supp. 180 (E.D.Va. 1976), *aff'd*, 580 F.2d 792 (4th Cir. 1978).

In this light, in the instant case we hold, as a matter of law that the trial court erred because the record demonstrates that Keystone made every reasonable effort necessary to assure the valve was properly repaired.

C. The RPM Logger Tapes

Secondly, the court below found that Keystone would have discovered the defect in the astern turbine had it examined the RPM logger tapes which monitor the revolutions per minute of the engine. In so finding, it held that Keystone had notice of a problem with the astern guardian valve, and, therefore, had a duty to monitor the turbine to assure it was unaffected by the earlier difficulties with the valve. The record reveals, however, that the RPM tapes, dating from the sea trials to the night of the collision, were excluded at trial. They were neither marked nor placed into evidence as an exhibit. The trial court admitted into evidence only the sea trial tape, and the tape for the day of the accident. The court did state that it would also consider the opinions testified about in court by Dr. Corlett with respect to the tapes. But, Dr. Corlett's testimony at trial, for the most part, compared the performance of the QUEENY on the night of the collision with its performance during the sea trials. He nowhere expressed an opinion related to the performance of the QUEENY over her sea life from the time of the sea trials until the accident. We hold, therefore, that since the tapes were not in evidence it was error for the trial court to review that data and to attribute to Keystone the duty to have acquired that knowledge and to have acted upon it. We must note that even if the tapes had been admitted, they would have had minimum probative value if any.

D. Problems of a Sister Ship

Thirdly, the district court found that Keystone was negligent because it did not properly investigate the cause of the turbine damage on a sister ship of the QUEENY in 1973, which purportedly would have alerted it to a defect in the QUEENY's astern guardian valve. In effect, the court held that due to an allegedly improper repair of another ship's, (the LIBERTY), "turbine," the defect in the QUEENY's "valve" was never found. Yet, the record nowhere indicates that the astern guardian valve on the LIBERTY was damaged in 1973. Nor is there any evidence that personnel on board the LIBERTY had ever experienced a problem with the astern guardian valve similar to the one experienced on the QUEENY.

Nothing in the record, therefore, supports the trial court's ruling that the damage discovered on board the LIBERTY should have caused Keystone to be concerned about damage on the QUEENY. Those attending the LIBERTY had determined that the damage to her turbine was the result of small bits of debris left in the steam-line—which was a plausible explanation.[12] And were we to rule that negligence with regard to the repair of one vessel could be imputed to the operation of another ship that is involved in a collision over a year later, we certainly would be extending the notion of foreseeability beyond reasonable limits. Thus, we hold that it was error for the trial court to find Keystone negligent for failure to determine the cause of the turbine damage on the LIBERTY and relate that information to the QUEENY's earlier valve problem on its maiden voyage.

12. It is not uncommon for such debris to stay in the propulsion system after the construction of a new vessel, and, thereby, damage the turbine blades. In 1973, the LIBERTY valve was opened for the first time. Hence, it was reasonable to assume that construction debris had caused the damage.

E. Captain Kellog's Letter

Finally, the trial court found that Keystone should have known of the damaged condition of the QUEENY's turbine because Captain Kellog was reluctant to perform a crash astern test that was not required. The captain did write a letter to Keystone indicating he felt "such a test might damage the intricate and delicate propulsion system" on the QUEENY. But, he had not been ordered to perform the test. Rather, in 1972, Keystone had sent out Master's Circular No. 5565 which stated, in significant part, as follows:

> In general, crash stop data was recorded during Builder's trials before delivery of a new vessel or before redelivery after a major conversion. You will appreciate that an emergency crash stop is a severe exercise on both machinery and hull. It is not desirable to undergo such a strain unnecessarily. Therefore, *where this information developed by the Builder is available from your records, the emergency crash stop need not be repeated.* In this case, make the data readily available for reference.

(emphasis added.) Captain Kellog was on board the QUEENY during its sea trials, so he was well aware that this information was available in the ships records.

In any event, the Kellog incident took place in March 1972, about a year and a half after the valve sticking incident in 1970, and there simply is not enough evidence in the record to lead us to the conclusion that Kellog's letter was related to the valve problem, or that it should have led Keystone to the discovery of the problem with the QUEENY's valve.

In conclusion, isolated events, such as those discussed above, over such an extended period of time, do not place

a shipowner on notice with respect to his vessel's alleged seaworthiness. In this regard, the courts must consider how many vessel activities are logged and monitored each day with respect to a vessel, let alone a fleet of vessels. The numbers are enormous. We find, therefore, that the separate and distinct events relied on by the trial court are, as a matter of law, not significant enough to support a ruling that Keystone had knowledge or privity of either the acts of negligence on board the QUEENY, or her purported unseaworthiness.

VII. THE LIABILITY OF VILLANUEVA

The QUEENY INTERESTS assert that the owners and operators of the CORINTHOS were at fault because they did not inert its tanks. The trial court held that "the absence of inerting systems was a contributing cause of the damages," but it ruled that it would grant Villanueva's petition for exoneration of liability because it was pre-empted by Congress from finding it unseaworthy.

The record indicates that once an uninerted tanker has discharged a cargo of crude oil, it may be likened to a floating time bomb. Inerting is a process that fills the cargo tanks of ships—when they are emptied of oil cargo during discharge—with inert gas rather than air which contains oxygen. This process reduces the likelihood of explosion or fire on such vessels because it prevents the build-up of fuel vapor which, when combined with oxygen, explodes when there is an ignition source.

Although the concept of inerting is not new,[13] the CORINTHOS was not fitted with an inert gas system when it was built in 1963. Villanueva argues that the trial court was precluded from requiring it to have retro-fitted the CORINTHOS with an inert gas system prior to

13. Chevron inerted some of its ships as early as 1925.

the accident of January 31, 1975 because Congress in October of 1978 enacted a specific schedule for the inerting of vessels like the CORINTHOS that does not require them to be inerted until June 1, 1983. The Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, 92 Stat. 437, (codified at 33 U.S.C. §§ 1221-1232; 46 U.S.C. §§ 214, 391(a)) (the 1978 Act). Moreover, Villanueva maintains that the trial court improperly found that the CORINTHOS was unseaworthy since as of January 31, 1975, it had complied with all of the existing international treaties and American legislation prescribing tank vessel equipment for the prevention of explosion and fire. Lastly, it contends that, in any event, an inert gas system would have been unable to prevent the explosions that followed the collision.

> In relevant part, the district court held as follows: Though in 1975, no law required the inerting of cargo tanks on vessels the size of the CORINTHOS, we believe that at that time, the custom of the industry was insufficient to satisfy common law standards of care. However, the CORINTHOS interests are fortunate that Congress has entered this field of law, thereby preempting the Courts from deciding this issue.

It was, however, a misapplication of the preemption doctrine for the district court to hold that it was preempted from considering a conflict between the federal legislature and the federal judiciary. The preemption doctrine, by definition, delimits the relation between the federal legislature and the states. Where the federal legislature regulates a particular area of conduct or activity with an eye toward maintaining uniformity among the states, no state may enact measures which circumvent the federal intent. *Gibbons v. Ogden*, 22 U.S. (9Wheat.) 1 (1824).

The federal judiciary, on the other hand, is vested with the authority to interpret the acts of the legislature and executive within the limits prescribed by the Constitution. Within these limits, federal courts are not preempted from interpreting statutes, reviewing executive orders, or establishing common law standards of care merely because another branch of government has entered and regulated a sphere of conduct. And, certainly, in this circuit, industry standards and practices normally establish only minimal requirements, and do not create immunity from liability. Indeed, in *Voegele Company, Inc. v. OSHRC*, 625 F.2d 1075, 1078 (3d Cir. 1980), we observed that

> other courts have evaluated the custom and practice of the industry as one aspect of the reasonable person test. These courts have refused to limit the reasonable person test to the custom and practice of the industry because "[s]uch a standard would allow an entire industry to avoid liability by maintaining inadequate safety . . . ." *General Dynamics v. OSHRC*, 599 F.2d 453, 464 (1st Cir. 1979). We find this policy reason for not making industry standards determinative to be quite compelling. *See Cape & Vineyard Div. v. OSHRC*, 512 F.2d 1148, 1152 (1st Cir. 1975) (in context of § 1910.132(a), "[t]here may . . . be instances where industry practice fails to take reasonable precautions against hazards generally known in the industry; in such event it may not be unfair to hold the employer to a standard higher than that of actual practice."); *Brennan v. Smoke-Craft, Inc.*, 530 F.2d 843, 845 (9th Cir. 1976); *American Airlines, Inc. v. Sec. of Labor*, 578 F.2d at 41.

We hold, therefore, that in precluding itself from considering the legislation in question in this case, the

court below was in error. Furthermore, we rule that the district court's alternative finding that the CORINTHOS was unseaworthy was improper for the reasons that follow.

On October 17, 1978, Congress enacted the 1978 Act. This Act makes provisions for the inerting of existing tank vessels of the type, capacity, age and size of the CORINTHOS. In Section 391(a)(7)(f), it states that:

> an existing crude oil tanker of 20,000 deadweight tons or above, [should] not later than June 1, 1983, be equipped with an inert gas system.

The statutory history of this piece of legislation reflects an attempt to balance the various interests concerned with the safety of tanker operations. The House Report on the Port and Tanker Safety Act, H.R. REP. No. 95-1384-PART 1, 95th Cong. 2d Sess, *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 3270, 3271, states as follows:

> In considering corrective legislative action, the committee has kept itself informed of the ongoing activity in the international arena, particularly in the Inter-Governmental Maritime Consultative Organization (IMCO); and H.R. 13311 reflects, in part, certain requirements accepted internationally, as developed in the recent meeting of the International Conference on Tanker Safety and Pollution Prevention, held in London in February, 1978.

The 1978 Act. Further, the Senate Report on a related statute, the Port and Waterways Safety Act, S. REP. NO. 2, 92d Cong. 2d Sess. 426, *reprinted in* [1972] U.S. CODE CONG. & AD. NEWS 2766, 2783, declares that

> [t]he committee fully concurs that multilateral action with respect to comprehensive standards for the

> design, construction, maintenance and operation of tankers for the protection of the marine environment would be far preferable to unilateral imposition of standards. However, standards are slow in coming from the multilateral forums . . .
>
> [Therefore] while the committee remains committed to the proposition that multilateral action in this area is preferable, it is not willing to sacrifice the objective of protection of the marine environment on the altar of that principal. Much more rapid and comprehensive action will be required if the United States is to continue to rely on multilateral forums.
>
> However, in the light of the preference for multilateral action shared by the administration and by the committee, provisions were adopted I.R. § 40 which attempted to resolve this dilemma, primarily thru the use of a deferral procedure.

In this light, the 1978 Act was a legislative response to a Presidential Message sent to Congress on March 17, 1977—a message with regard to the marine transportation of oil. In this message, President Carter recommended reforms in ship construction and equipment standards (including the requirement of inert gas systems on oil tankers over 20,000 deadweight tons). He hoped that these requirements would be "fully effective within five years." 123 CONG. REC. 7931 (1977).

Notwithstanding the President's hopes for the future, however, on January 31, 1975, the day of the collision, the CORINTHOS was in compliance with the existing international treaties, and United States legislative and regulatory requirements concerned with fire fighting and explosions. It complied with all the fire fighting and anti-explosion provisions of the Safety of Life at Sea

(SOLAS) Conventions of 1948 and 1960.[14] Furthermore, in accordance with the SOLAS requirements, her owners had ensured not only that the vessel was equipped for fire fighting, but also that her crew was properly trained to fight fires. Finally, the CORINTHOS was also recognized by the American Bureau of Shipping (ABS) [15] to be seaworthy. Thus, we find it was clearly erroneous for the lower court to rule that the CORINTHOS was unseaworthy.

Over the years a series of laws and regulations have been enacted with regard to tanker safety so as to phase in equipment requirements for ships. Congress has determined after considering many factors, including shipyard capacity and the available technology, that five years should be allowed before the retrofitting of tankers over 20,000 deadweight tons becomes mandatory. Were we to impose liability on vessels before this time period is up, the Congressional timetable would be rendered useless. Hence, in this instance, we will be guided by the federal legislation developed by Congress.

VIII.

For the reasons stated above, we will reverse the district court with respect to its denial of the petition of limitation of liability to Keystone. Moreover, we will hold that the preemption doctrine is not applicable as to Villanueva. To the extent that the court made an alternative finding to deny Villanueva's petition for limitation of liability because it failed to use an inert gas system on

14. *See* Safety of Life at Sea Convention, June 10, 1948, 3 U.S.T. 3450, T.I.A.S. No. 2495; and Safety of Life at Sea Convention, June 17, 1977, 16 U.S.T. 185, T.I.A.S. No. 5780.

15. The ABS is recognized by the United States Government as a government agency authorized to inspect and classify tank vessels 46 U.S.C. § 881.

the CORINTHOS, we will rule that the alternative finding was error as a matter of law. Of course, in admiralty, appeals from interlocutory decrees are permissible as a matter of statutory right.[16] In this case, there was no decree entered by the trial court as to the issues raised in the appeals filed by B.P./Sohio in 80-1450 and 80-1495, and, therefore, the appeals in those cases must be dismissed for lack of appellate jurisdiction. We remand the case to the trial court for further proceedings consistent with this opinion.

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16. *See* 48 U.S.C. § 1292(a)(3). *See also* 9 MOORES FEDERAL PRACTICE § 110.19[3], and 7B MOORES FEDERAL PRACTICE § 1292(a)(3).

Order Amending Opinion of the United States Court of Appeals for the Third Circuit, In the Matter of: The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability and Villaneuva Compania Naviera S.A., Amoco Overseas Oil Company and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company and The William Powell Company, Third-Party Defendants; Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1405 and Cross-Appellees, No. 80-1450 and No. 80-1496 and In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants, British Petroleum, Ltd.; B.P. Oil Inc. and Sohio Petroleum Company, Third-Party Defendants, Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1494 and Cross-Appellees, No. 80-1495 and No. 80-1497, Filed July 24, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-1405, 80-1450, 80-1496

In the Matter of:

The Complaint of Bankers Trust Company, et al. and Villaneuva Compania Naviera, S.A., et al. v. Bethlehem Steel Corporation, et al.

Bankers Trust Company, et al.,
Appellants at No. 80-1405

BP Oil Inc., et al.,
Appellants at No. 80-1450

Villaneuva Compania Naviera, SA.,
Appellant at No. 80-1496

(D.C. Civil No. 75-0364)

Nos. 80-1494, 80-1495, 80-1497

In the Matter of:

Complaint of Villaneuva Compania Naveria, S.A., etc., et al.; National Grange Mutual Insurance Company v. Bethlehem Steel Corporation, et al. v. British Petroleum, Ltd., et al.

Bankers Trust Company, et al.,
Appellants at No. 80-1494

BP Oil Inc., et al.,
Appellants at No. 80-1495

Villaneuva Compania Naviera, S.A.,
Appellant at No. 80-1497

(D. C. Civil No. 75-2110)

ORDER AMENDING OPINION

Present: WEIS and HIGGINBOTHAM, *Circuit Judges,* and DEBEVOISE, *District Judge**.

Banker's Trust Company, as owner-trustee, has filed a motion for clarification of judgment—as to whether our reversal of the denial of limitation of liability to "Keystone" included also a reversal as to the denial of the limitation of liability to Banker's Trust Company and Monsanto Company. In our opinion at p. 29, we used the term "Keystone" in a collective sense as it was used in the joint brief of Banker's Trust, Monsanto Company and Keystone Shipping Company, wherein they stated that the three entities would "hereafter collectively [be referred to as] Keystone." Brief, p. 4. To eliminate any possible ambiguity,

IT IS ORDERED that the Slip Opinion of this Court filed May 15, 1981 be amended as follows:

Page 4, paragraph 2, line 6, "Keystone Shipping Company (Keystone)" should be deleted and

"Keystone Shipping Co. (Keystone Shipping)" be substituted;

Page 4, paragraph 2, line 7, the words "or Keystone" should be inserted after the words QUEENY INTERESTS.

Page 10, Title to Section III, "KEYSTONE'S PETITION TO LIMIT ITS LIABILITY" should be deleted and

* Honorable Dickinson R. Debevoise, United States District Court for the District of New Jersey, sitting by designation.

"THE QUEENY INTERESTS' PETITIONS TO LIMIT THEIR LIABILITY"

be substituted.

PAGE 29, VII., the first full sentence of that paragraph which reads "For the reasons stated above, we will reverse the district court with respect to its denial of the petition of limitation of liability to Keystone" should be deleted and the following sentence substituted:

> For the reasons stated above, we will reverse the district court with respect to its denial of the petition of limitation of liability to Bankers Trust Company, Monsanto Company and Keystone Shipping Co.

BY THE COURT:

A. LEON HIGGINBOTHAM
Circuit Judge

Dated: July 24, 1981

Memorandum Opinion and Order of the United States District Court for the Eastern District of Pennsylvania, in the Matter of The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., as Chartered Owner and Operator of the SS. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability, Civil Action No. 75-364; in the Matter of The Complaint of Villaneuva Compania Naviera, S.A., Owner of the Tank Vessel CORINTHOS, for Exoneration from and Limitation of Liability, Civil Action No. 75-2110, Filed February 19, 1980.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C.A. NO. 75-364

In the Matter
of

The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the SS EDGAR M. QUEENY, for Exoneration from and Limitation of Liability

C.A. NO. 75-2110

In the Matter
of

The Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability

Memorandum Opinion and Order

WEINER, *J.* FEBRUARY 19, 1980

These admiralty actions arise out of a collision which occurred during the early morning hours of January 31, 1975, on the Delaware River at Marcus Hook, Pennsylvania. The vessels involved were the SS Edgar M. Queeny ("Queeny"), an American steamship, and the S.T. Corinthos ("Corinthos"), a Liberian steam tanker. At the time the collision, the Corinthos was moored, starboard

side, to the BP Oil Inc/Sohio Petroleum Company dock at Marcus Hook, Pennsylvania in order to discharge her cargo of crude oil. The collision and the resulting explosions caused extensive damage to the dock, the destruction of the Corinthos, oil pollution of the Delaware River, minor damage to the Queeny, damage to neighboring properties, and tragic loss of 26 lives and other personal injuries.

As a result of this incident, numerous proceedings were instituted. The personal injury and wrongful death actions were settled and dismissed, and therefore shall not be discussed in this opinion. A products liability action was filed by BP Oil Inc. and Sohio Petroleum Company against Bethlehem Steel Corporation, General Electric Company and The William Powell Company (See C.A. 77-2362). These defendants, collectively referred to as the products or third party defendants, participated in one aspect or another in the design and construction of the Queeny, her turbine set and controls, and the astern guardian valve. At the time of trial, the products liability action was severed and stayed pending the resolution of the limitation actions.[1] Also severed at the time of trial was the action of BP Oil, Inc./Sohio Petroleum Company against Villanueva Compania Naviera, S.A., et al., owner of the Corinthos (See C.A. No. 75-1285).

In the instant limitation actions, the issue of damages was bifurcated from the issue of liability, and the cases then proceeded to trial before the court sitting without a jury. On the second day of trial, James F. Young, Esquire, attorney for the Queeny interests admitted that his client no longer sought exoneration. (N.T. Pgs. 38-39, July 19, 1979). Accordingly, our opinion will address the questions of whether the Queeny interests are entitled to limit

1. The products liability action was severed on the granting of a motion of the products liability/third party defendants.

their liability and whether the Corinthos and BP Ohio Inc./Sohio Petroleum Company interests can be exonerated from or limit their liability. For ease of understanding, our Findings of Fact, Discussion, and Conclusions of Law shall be recited in narrative form rather than in separately numbered paragraphs.

II

The SS Edgar M. Queeny, Official Number 528567, is a single screw, steam powered tank vessel of 19,046 gross tons. She is 660.2 feet in length and 90 feet in breadth. She is powered by a 15,000 shaft horsepower steam turbine. She was designed and built as a multi-product chemical tanker by the Bethlehem Steel Corporation ("Bethlehem") during the mid-to-late 1960's for the Monsanto Chemical Co. The Queeny's turbine set and controls was designed and built by the General Electric Company ("G.E.") pursuant to a subcontract with Bethlehem. G.E. in turn, subcontracted with The William Powell Company ("Powell") for the manufacture of a valve known as a Marine Astern Guardian Valve, to be used in the turbine.

The Corinthos, Official Number 1916, was a single screw, steam powered tank vessel of Liberian registry of 30,705 gross tons. She was 723.7 feet in length and 106 feet in breadth. She was powered by a 17,000 horsepower steam turbine.

The Corinthos moored at the BP Oil, Inc. refinery dock in Marcus Hook, Pennsylvania at approximately 1500 hours (3:00 p.m., Eastern Standard Time) on January 30, 1975 and began discharging its cargo of crude oil. The Queeny moored across the river at the Monsanto Chemical Co. dock at Bridgeport, New Jersey at approximately 1248 hours (12:48 p.m., Eastern Standard Time) on January 30, 1975, in order to discharge part of its cargo.

At the time of docking, the Queeny was under the command of Captain Fay Kellog with Sverre Sorensen at the conn [2] serving as the pilot. Both Captain Kellog and Pilot Sorensen were familiar with the Queeny having participated in her docking and undocking maneuvers many times. At approximately 2300 hours (11:00 p.m., Eastern Standard Time) the vessel began preparations to depart Bridgeport, New Jersey and proceed to Paulsboro, New Jersey. As part of these preparations, the Third Mate, Robert Downs, and an engineer tested the engine order telegraph at the bridge and engine room locations, the steering gear, the bow thruster, and synchronized the wheelhouse, chartroom and engine room clocks. The equipment which was tested was found in good operating condition.

Since the Queeny was moored port side to the pier, it was necessary for it to make a 180° starboard turn upon leaving the dock in order to proceed upstream to the next discharge facility at Paulsboro, New Jersey.

At approximately 0006 hours (12:06 a.m., Eastern Standard Time) on January 31, 1975, the Queeny departed the Monsanto terminal. Its draft at that time was 36 feet forward and 36 feet 10 inches aft. The weather was clear and cold with visibility of 8-10 miles. The tide was flooding with a current of about 1.5 to 2.0 knots and the eastern half of the Marcus Hook channel was closed for dredging operations. The dredging operations reduced the channel width from its normal 800 feet to 400 feet. The "Local Notice to Mariners" required vessels to proceed up the western half of the channel.

During the undocking maneuver, the master and pilot were on the bridge; the third mate, Robert Downs, was manning the engine order telegraph; and the quartermaster, Daryl Sutton was at the helm. In the engine room

2. Conn is a nautical term meaning control of the ship.

at this time were the first assistant engineer, George Zahar, at the engine control with third assistant engineer, J. King; and engineman, J. Tomczak. At the forecastle docking station were Michael Casey, first mate; and Arvie Harris, able seaman; along with several other crew members. At the after docking station was chief mate, Lee Woodward, with various other members of the ship's crew assisting to undock the vessel.

In maneuvering from the dock, the Queeny used its main engine and bow thruster, and had its rudder hard left. The Tug Tanda 12, which was engaged to assist with the undocking, was positioned on the port bow and was in radio communication with Pilot Sverre Sorensen who was at the conn. Both anchors on the Queeny were ready to let go, to the degree that it was necessary only to remove the riding pawl and disengage the braking mechanism.

At the time of letting go the lines, prior to departing, Pilot Sorensen made a safety call on Channel 13 of the VHF stating that the Queeny was preparing to leave the dock at Monsanto. Once the vessel was clear of the dock and was proceeding into the river, a second safety call was made. Also at that time the Queeny began backing and filling, using a series of astern and ahead maneuvers in conjunction with the ship's rudder, the bow thruster, and the tug boat to facilitate the starboard turn of the vessel to position her to head upriver. As she was heading into the channel both Pilot Sorensen and Captain Kellog were aware that the eastern half of the channel was closed.

At about 0010 hours (12:10 a.m., Eastern Standard Time), Tug Tanda 12 was pushing the port bow of the Queeny to assist the ship in the turning maneuver. At about that time, Pilot Sorensen came into radio contact with Captain William Kegel, Master of the upbound S.S. Pennsylvania Sun in order to discuss the Queeny's inten-

tions. During this time, the bow thruster was on right thrust and the Queeny's engines were placed on half ahead with rudder hard right. In the period of time between 0010 and 0022 hours, the Queeny backed and filled approximately twice in order to facilitate its turn.

Located in the river approximately 1060 feet from the Monsanto dock and 1,440 feet from the channel edge is anchor buoy D. At about 0022 hours, the Queeny approached buoy D, said buoy being located about 30-35 yards from the port bow, bearing well to the left of the bow. Also at that time, the Tug Tanda 12 was released from the port bow and was instructed to stand by at Paulsboro, New Jersey. Captain Kellog was on the starboard wing of the bridge and Pilot Sorensen was on the port wing.

Though the rate of swing materially decreased upon the release of the tug, Captain Kellog felt no cause for concern because he expected Pilot Sorensen to back and fill additionally as he had done on other occasions in that same turn across the river or in similar maneuvers. However, as the rate of swing decreased, the Queeny's forward acceleration increased.

At this point, Captain Kellog became apprehensive that the Queeny would not clear the Corinthos because of Pilot Sorensen's failure to continue to back and fill, and because of the decrease in the rate of turn. Though Captain Kellog voiced his concern about the "closeness" of the situation, Pilot Sorensen replied, "Captain, she should make that O.K.", or words to that effect.

Shortly thereafter, Captain Kellog again voiced his concern to Pilot Sorensen, stating: "Captain, I think we better go astern because we will be very close on this maneuver", or words to that effect. Captain Kellog received no response to his statement. He noted that Pilot Sorensen was engaged in a radio exchange with Captain Kegel of the S.S. Pennsylvania Sun.

Captain Kellog became concerned with the proximity of the Queeny to the well lighted Corinthos, and he ordered full astern. That order was rung up on the engine telegraph by Third Mate Downs. The full astern order was promptly acknowledged by the First Assistant Engineer, George Zahar, who then executed the order.

Shortly thereafter, Pilot Sorensen ordered a "double jingle" which order was received and promptly acknowledged by the engine room. The order had little impact on the operation of the engines in that Mr. Zahar had already opened the throttle as far as he thought could be safely done. The rate of the Queeny's turn to the right was reduced as the propeller responded to the full astern order.

As the bow of the Queeny continued to ease closer to the Corinthos, Pilot Sorensen recommended that the starboard anchor of the Queeny be dropped. Captain Kellog apparently acquiesced in that he gave that order via his walkie talkie. No response was received because Arvie Harris, the Bow Lookout and the only person stationed at the windlass anchor watch position, had fled the extreme bow, seconds before, in the face of an impending collision.

Moments later, the Queeny came into contact with the Corinthos. The first contact produced sparks as a result of scraping between the two vessels. Due to the shock of the initial contact and the ships' rolling and pitching, there was an interval of intermittent non-contact and contact. It was during the subsequent contacts that the port fluke anchor of the Queeny punctured the port shell plating of the No. 4 and/or No. 5 cargo tanks of the Corinthos. During this time period, there was a series of explosions, followed by a conflagration.

Immediately after the collision and first explosion, third mate Downs instinctively rung up "Stop" on the

engine telegraph. Shortly thereafter, Captain Kellog noted that the tachometer indicated 0 RPM's and called to Mr. Downs for full astern. That order was executed but not without a degree of confusion.

Captain Kellog, in an effort to emphasize the order, took the bridge telegraph control handle and signalled what he believed to be "Full Astern." Inadvertently, the telegraph was moved to "Bridge Control" following which the First Assistant Engineer called the bridge by telephone to confirm the request. Failing to receive a response from the bridge, the engineer moved the throttle control selector to the "Bridge Control" position. After some confusion, the bridge selector switch was moved from "Bridge Control" to "Full Astern", which signal was received and responded to by the engine room. The Queeny's propeller then began to turn in reverse.

Efforts to back the Queeny away continued until 0041 hours, at which time the Queeny pulled clear, and was able to proceed "full ahead" away from the burning Corinthos. While the Queeny headed downriver toward an anchorage area, its crew was engaged in extinguishing a fire on the Queeny's forecastle head.

At approximately 0100 hours (1:00 a.m., Eastern Standard Time), the Queeny anchored at a position close aboard buoy C of the Sun Oil dock. At about 0305 hours, she began to heave anchor and shifted to another anchorage which was completed at about 0345 hours when the Queeny safely anchored.

Meanwhile, the fires aboard the Corinthos continued to burn out of control through the early morning hours of January 31, 1975. During the course of the fire-fighting activities, the Delaware River was intermittently opened and closed to traffic as the danger of additional fires fluctuated.

Eventually, the fires and explosions on board the Corinthos caused that ship to break in half and to immediately sink near by the BP dock.

III

Limitation and/or exoneration of a vessel owner's liability is provided for in Title 46 of the United States Code, Section 181 *et seq.* The section pertinent to the issues in this case is Section 183(a), which in relevant part, provides:

> "The liability of the owner of any vessel . . . for any . . . loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage or injury by collision, or for any act, matter, or thing, loss, damage, forfeiture, done or occasioned, or incurred without the privity or knowledge of such owner or owners shall not, . . . , exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

The analysis of whether the Queeny interests are entitled to limit their liability involves a two-step process. First, we must determine what acts of negligence or conditions of unseaworthiness caused the accident. Second, we must determine whether the shipowner had knowledge or privity of those same acts of negligence or conditions of unseaworthiness. *Farrell Lines, Inc. v. Jones,* 530 F.2d 7, rehearing denied, *African Neptune, S.S.,* 532 F.2d 1375 and *Farrell Lines, Inc. v. Jones,* 532 F.2d 1935 (5th Cir. 1976). Negligent actions or unseaworthy conditions of which the vessel owner has knowledge or privity will trigger the denial of limitation. *Wyandotte Transportation Co. v. United States,* 88 S. Ct. 379, 389 U.S. 191, 19 L. Ed. 2nd 407 (1967). Moreover, it is settled that the claimants

bear the initial burden of proving negligence or unseaworthiness while the Queeny interests bear the burden of proving lack of privity or knowledge. *Farrell Lines, Inc. v. Jones, supra.*

The parties do not dispute that the predominating cause of this disaster was Pilot Sorensen's failure to properly execute the starboard turn into the Marcus Hook channel due to his navigational error. In addition, it is clear that navigational error on the part of the crew generally occurs without the privity or knowledge of the shipowner, and is not attributable to an absent owner for purposes of limitation of liability. *Tittle v. Aldacosta,* 544 F.2d 752, rehearing denied 546 F.2d 906, 907, rehearing denied 582 F.2d 12 (5th Cir. 1977).

IV

The claimants in this case however, have argued and presented voluminous testimony and exhibits to the effect that other acts and/or conditions of which the Queeny interests had knowledge or were privy to contributed to the accident.

BP Oil, Inc. and Sohio Petroleum Co. contend that contributing causes of the collision were:

(1) The failure of shoreside management to use due diligence to discover and remedy the damage to the astern turbine which reduced the Queeny's astern power by 40% and rendered her unseaworthy;

(2) The commitment by management of discretion to the master to disregard company instructions requiring an anchor watch while maneuvering in congested waters which precluded the dropping of the anchors, which could have prevented the collision; and

(3) The continued pressure of Monsanto on Keystone to cut costs, which resulted in the failure to use the

bridge control and premature relief of the bow detail without posting an anchor detail.

The Corinthos interests raise the same three points and allege as other contributing causes of the collision:

(1) The failure of shoreside management to instruct the master and officers of the Queeny to use tugs throughout any starboard turning maneuver in confined or restricted waters because of the Queeny's inability to properly turn starboard;

(2) The failure of shoreside management to instruct the master and officers of the Queeny that the bow thruster power had been increased by the shipbuilder from 1200 to 1600 amps; and

(3) The failure of shoreside management to inquire into

(a) The reason the master refused to perform a crash stop test, and into

(b) The master's apprehension that such a test would damage the vessel's propulsion system.

V

After review of the evidence we conclude that the Queeny interests are not entitled to limit their liability. Factors other than navigational error, to which they were privy or had knowledge, contributed to the collision.

The issue which dominated much of the claimants case was the alleged defective condition of the astern turbine and the astern guardian valve. They introduced evidence which established that the valve and turbine were in a damaged condition and were contributing causes of the collision. The claimants contended that if the astern turbine performed properly on the night of the collision, the Queeny would have been able to stop prior to contacting the moored Corinthos.

The turbine set for the Queeny was supplied to Bethlehem Steel Corp. by General Electric, who in turn had selected the William Powell Company to supply the astern guardian valve.

The astern guardian valve is physically located on the main steam line just outside the steam inlet to the astern element of the low pressure turbine. It is the last valve the steam passes through before entering the astern turbine. Its purpose is to guard the astern turbine from an accidental opening of the astern throttle valve while the turbine is turning forward RPM's.

When the astern guardian valve is opened, steam will pass into the astern turbine and reverse the engine. If steam was accidently released into the astern turbine while it was at full speed ahead, the turbine would be severely damaged.

The basic valve is a disc, 5" in diameter and 6" high, which is attached to the end of a stem. The disc moves up and down inside the valve body as the stem is raised or lowered by operation of a motor. The stem also can be operated by a hand wheel. The bearing surfaces of the disc, which touch the valve body are referred to as the guide surfaces.

The clearances between the guide surfaces and the valve body, at normal room temperature, is 10-12/1,000ths of an inch, as designed.

The disc and valve body were both manufactured of the same material, which was grade ASTM-217 (grade WC6) cast steel. Neither the disc nor the body was specifically treated to obtain differing degrees of hardness.

The operation of the valve is as follows. Steam enters the valve through an inlet in its side and exits through a hole in the bottom of the valve. When the valve is open the disc is lifted to partially clear the inlet at the side and open the hole in the bottom. When closed,

the valve seats on the bottom of the body, closing the exit hole. On the inside of the valve body, the inlet opening presents a sharp edge past which the guide surfaces must travel on opening or closing. As the disc travels up and down, it is held in position by the guide surfaces which contact the body of the valve. The stem does not provide guidance to protect against contact between the valve disc and valve body, but merely moves the disc up and down.

VI

The defect in the astern guardian valve was the galling or gouging of its surface, caused by the rubbing of the two metal castings manufactured from the identical grade steel. As the surfaces rubbed together, the effect was a welding together of the surfaces followed by the chiseling free of pieces of metal. The continued operation of the system, caused larger pieces of metal to break free which metal pieces were then projected into the astern turbine by the passing steam. The metal pieces damaged the turbine's blades. The damage to the astern turbine's blades reduced the Queeny's astern power.

The significance of the reduced astern power is manifest. When Captain Kellog ordered full astern in face of the impending collision, the Queeny's engines did not properly respond to the command. The turbines of the Queeny were designed for normal sea use and had been guaranteed to run at an astern RPM equal to 70% of 109,[3] which is 76.3 RPM. In an undamaged condition, the Queeny's astern turbine would have responded to the full astern command by producing 76.3 RPM. On the Queeny's sea trial run, it achieved astern power of 76 RPM. However, on the night of the collision, the astern turbine did not produce the guaranteed level of astern

3. 109 R.P.M. is the full ahead rating of the turbines.

RPM's. It is clear that the condition of the Queeny's astern turbine rendered her unseaworthy.

Moreover, the expert of the Corinthos interests established that if the Queeny's astern turbine functioned properly, the Queeny would not have collided with the Corinthos.

To that effect, the Corinthos interests' finding of fact #87 is accepted and adopted by this Court. It reads as follows:

> "87. Dr. Corlett reconstructed the events of the night of the collision to confirm that the QUEENY: (a) If navigating with a damaged astern turbine and the slow rate of change of recorded RPM on the night of the collision from half ahead to full astern (with all other conditions being the same as on the night of the collision), she would have collided with the CORINTHOS. His findings precisely followed the facts of the collision which actually took place that night. (C-343, Line 1) [Dr. Corlett's Matrix on the Court Room Easel]. (b) If all other conditions were the same as on the night of the collision, but with the astern turbine undamaged and 76 RPM's astern recorded at the rate of change recorded on the official Sea Trial Tape, there would have been no collision. (C-343, Line 2) See also, (Line 4 of C-343) where it is again demonstrated that undamaged turbine permits the vessel to avoid collision where the vessel achieved 76 RPM astern at the rate of change recorded at sea trials: (c) Again, assuming that all other conditions were the same as on the night of the collision, but with the astern turbine as damaged and that only 70 RPM's astern were recorded showing a rate of change recorded on the RPM tape as shown on the night of the collision,

there would have been a collision. (C-343-Line 3). Thus, on the night of the collision, even if the engineers achieved 70 RPM as claimed by Zahar (who was relying on the Bridge Logger Tape), there would have been a collision in any event. The Bridge Logger Tape is the only tape which can conceivably be read as 70 RPM astern on the night of the collision. (d) if the vessel had achieved 76 RPM's astern on the night of the collision with an undamaged turbine and the RPM's were recorded on the night of the collision, there would have been no collision. (C-343, Line 5). (e) Finally, Dr. Corlett proved that if only 65 RPM's astern were achieved with a damaged turbine, and the rate of change were identical to that recorded rate at the time of sea trials, there would have been no collision. (C-343; Corlett N/T 1397-1405; C-87).

Thus, whenever the vessel was functioning with damaged turbines, a collision resulted except for line 6 on C-343. The hypothetical situation outlined there by Dr. Corlett (i.e. application of the rate of change of RPM's as rapidly as on the sea trials), could not have happened on the QUEENY on the night of collision because the engineers would not apply the sea trials rate of change. Each one testified and confirmed that such a rate of change would have risked loss of power through a boiler surge. (Breton Dep. 80-82, Q-78; Ross Dep. Sept. 21, 1978, 19-20, 22, 49, 53, 48-49, 73-74, 131; C-355; Zahar N/T 381, 387)."

VII

In order for this finding to be fully comprehended, it is necessary to describe the method by which commands are given to the Queeny's engines, and the meaning of "rate of change".

Commands to the Queeny's engines and control of her main throttle can be effectuated by three different methods. (1) Directly, termed "Bridge Control", whereby a throttle in the wheelhouse is operated which automatically controls the direction and speed of the engines; (2) Automatically by the engineer on watch by using the engine room console, termed "Central Control"; or (3) Manually by the engineer on watch by operating the throttle control valve by hand, termed "Manual Control". When the ship is operating on either "Central Control" or "Manual Control" the engineer on watch receives his commands via the engine order telegraph.

When the ship is operating on "Bridge Control", the bridge has direct control of the ship's maneuvering speed and direction, and the response time of the engine is greatly reduced. Operation on either "Central Control" or "Manual Control" necessarily increases the engine response time because additional steps are taken before the throttle is adjusted in compliance with an order from the bridge.

Rate of change as used in the above paragraphs refers to the elapsed time from the time the full astern order was given by Captain Kellog until the time the throttles were actually placed on full astern. Operation on Bridge Control permits the Captain or Pilot to place the throttles in any position desired within a matter of seconds. On its sea trials, the Queeny was operated on Bridge Control, and the throttle response was approximately 5 seconds. Dr. Corlett's findings establish that if the sea trial rate of change (i.e. virtual instantaneous throttle response) applied, the Queeny would not have collided with the Corinthos, provided the engine achieved a minimum of 65 astern RPM's.

On the night of the collision, the Queeny was operating on Central Control. Central Control requires a de-

sired command to be transmitted via the engine telegraph in the wheelhouse to the engine telegraph indicator in the engine room, an acknowledgment by the engineer, and then execution of the order by the operation of the control wheel which will automatically activate the throttles. On the night of the collision, operating on Central Control, 1 minute and 45 seconds elapsed from the time the order for full astern was given until the throttle was placed on full astern. In comparison to the amount of time which would have elapsed if the vessel was operating on Bridge Control, Dr. Corlett termed the rate of change on the night of the collision, slow. His findings establish that given the slow rate of change, the Queeny could have avoided the collision only if the vessel produced 76 astern RPM's. Though we do not find the failure to use "Bridge Control" to be a contributing cause of the collision, it is clear that the inability of the vessel to produce 76 astern RPM's was a contributing cause of the collision.

VIII

Because we have determined that the astern guardian valve and the astern turbine were defective at the time of the collision, and were contributing causes of the collision, we shall not make a finding regarding the claimants other alleged causes of the collision. Instead, we shall proceed to determine whether the Queeny management interests were privy to or had knowledge of the defective condition of the astern turbine and the astern guardian valve. We have concluded that the requisite knowledge existed.

The parties do not dispute that in the case of a corporate owned vessel, the privity or knowledge issue turns on whether shore-based high leveled management was aware or should have been of the likelihood of the occurrence happening after the ship was under way. *Tittle v. Aldacosta,* 544 F.2d 752, rehearing denied, 546 F.2d 906,

rehearing denied, 582 F.2d 12 (5th Cir. 1977). Thus, we must determine what knowledge, if any, the owners of the Queeny had regarding the defective astern turbine and astern guardian valve at the time of the collision.

Difficulty with the operation of the astern guardian valve first surfaced in September, 1970, shortly after the Queeny was delivered to her owner. On her maiden voyage from Baltimore to Texas, the astern guardian valve malfunctioned by either sticking or jamming in the closed position. While in the closed position, steam is prevented from passing through to the astern turbine.

Normally, the valve is operated automatically by the limitorque motor. This motor provides torque to open or close the valve. The limitorque component of the valve limits the torque which can be applied by the motor. On the maiden voyage, the motor was incapable of moving the valve. Each time operation was attempted, the electrical circuit overloaded and the circuit breaker was tripped.

The astern guardian valve is equipped with a hand wheel which can be used to manually operate the valve. On the maiden voyage, the Queeny's Chief Engineer Breton attempted to turn the hand wheel, but was unable to do so. Eventually, Breton, with the assistance of Bethlehem Steel Guarantee Engineer Jensen, who also was aboard, was able to free the hand wheel by using a wrench which provided additional leverage. The wrench is referred to as a "cheater".

The use of the "cheater" enabled the engineers to apply excessive force to the hand wheel in order to break free the valve. The valve was jammed because the disc and the valve body, both of which were manufactured from the identical grade steel, had welded together. The application of the excessive force not only broke the weld, but also chiseled free pieces of metal from the disc and

the valve body, which metal pieces were projected into the astern turbine by the passing steam. The metal pieces damaged the astern turbine blades.

The instruction manual for the astern guardian valve specifically states that a "cheater" should never be used on the handwheel. The manual also states, in a section entitled "Trouble-Shooting: Excessive handwheel effort can indicate the following: (a) improperly lubricated or damaged valve stem; (b) valve packing gland too tight; (c) improperly lubricated valve; (d) stem nut too tight on valve stem; (e) faulty or damaged valve parts".

Rather than investigate the cause of the jamming of the valve, Breton and Jensen reset the limitorque circuitry to allow the valve to open and close.

Keystone management was aware of the difficulties with the astern guardian valve as of September 14, 1970. On that date, Samuel Spencer, Technical Assistant to the Vice President of Keystone, routed an internal memorandum to Adolph B. Kurz, President of Keystone, informing Kurz of the outstanding problem with the astern guardian valve. Spencer also notified Bethlehem Steel, specifically, E. L. Insley, the Chief Guarantee Engineer, regarding the difficulties with the astern guardian valve.

As a result of Keystone's complaints about the valve, and Jensen's reports to Bethlehem, the valve was listed by Bethlehem as an item for repair at the guarantee yard dry docking after six months of operation. Three separate items involving the valve were ultimately included in the "Status of Guarantee Items" list dated March 23, 1971. They were: (a) B-34 Astern Guardian Valve won't close; (b) B-57 Astern Guardian Valve; and (c) B-154 Astern Guardian Valve bracket.

As part of Bethlehem's guarantee service program, it was arranged for Guarantee Engineer Robert McKendrick

to meet the Queeny at New Haven, her first northern port, on September 20, 1970. However, McKendrick did not examine the valve nor did he take steps to determine the cause, scope or nature of the problem. When he met the Queeny, he was informed that the problem was rectified.

Consequently, McKendrick submitted his trip report with the notation that the valve problem was solved and Bethlehem marked items B-34 and B-57 as completed. Thus, when the Queeny entered the shipyard for guarantee period repairs in March, 1971, the astern guardian valve was not opened and no inspection was made. The cause of the jamming and sticking of the valve was not investigated.

The Queeny interests' failure to insist upon an inspection of the astern turbine and astern guardian valve during the guarantee period repairs is not excusable on the ground that they were informed that after adjustment of the limitorque circuitry, the valve functioned properly. The clear warning contained in the instruction manual for the astern guardian valve "Trouble-Shooting" section placed the Queeny interests on notice of the possibility of damage to the valve. In view of this clear warning, it was incumbent upon the Queeny management to insist upon an adequate inspection during the guarantee period repairs.

Moreover, during the period of operation between the date of the sea trials and the date of the collision with the Corinthos, it was apparent that the astern turbine was not producing RPM levels in accordance with the specific commands given, and that the engine response time for orders for 60 RPM or greater, increased. These facts were readily ascertainable because the Queeny is equipped with a data logger system which records on a continuous graph every engine command and the shaft response.

However, Queeny management failed to review the graph tapes. Proper monitoring of the turbine's performance by review of the graph tapes would have revealed the deficiency in the turbine's performance. Queeny management, having notice of the difficulties with the astern guardian valve, should have monitored the performance of the astern turbine to determine if it was affected by the prior difficulties with the astern guardian valve.

Moreover, difficulty with the turbines of the SS Spirit of Liberty, a sistership of the Queeny operated by Keystone, should have placed the defendants on notice that there was a possibility of damage to the Queeny's turbine and astern guardian valve. Both the Queeny and the Spirit of Liberty contained astern guardian valves manufactured by the William Powell Company according to the same specifications, using non-hardened metals.

Extensive damage to the Spirit of Liberty's astern turbine was discovered in December, 1973, when the turbine was opened and inspected during her quadrennial survey. It is noteworthy that the damage suffered by the astern turbine of the Spirit of Liberty was very similar to the damage subsequently discovered on the Queeny.

The cause of the damage to the astern turbine of the Spirit of Liberty was not ascertained. The origin of the metal particles that damaged the turbine was not isolated. If proper procedure was followed for determining the cause of the damage, the failure of the astern guardian valve would have been discovered. Since Keystone receives reports from Bethlehem regarding repairs to its ships, they would have been alerted to the possibility of damage to the astern guardian valve on the Queeny when damage to the astern turbine of the Spirit of Liberty was reported.

Additional evidence combines with what has been recited to establish that Keystone negligently failed to monitor the performance of the Queeny's astern turbine.

In February, 1972, Keystone instructed all its Captains to perform turning circle tests and crash stop tests (emergency full astern). Though Captain Kellog performed turning circle tests, he refused to perform a crash stop test. He was apprehensive that such a test might damage the intricate and delicate propulsion system. By letter dated March 12, 1972, he expressed his fears to Keystone's Vice-President in charge of Operation, Chester Williams.

This letter clearly put Keystone on notice that the Queeny might be incapable of performing an important safety maneuver. Keystone, however, took no measures to determine the nature of Captain Kellog's fears.

If Keystone had been reviewing the graph tapes they would have discovered the problems associated with the functioning of the astern turbine. With such information in hand, the reason for Captain Kellog's refusal to perform the crash stop test would have been manifest.

The evidence referred to in this section of our opinion clearly indicates that the Queeny's shoreside management was aware, or was negligent in not being aware, of the vessel's unseaworthiness. The unseaworthy conditions referred to were contributing causes of the collision.

Based upon the legal precedent set forth in Section III of our opinion, we conclude that the Queeny interests are not entitled to limit their liability.

IX

Our conclusion regarding the Queeny interests' petition does not complete our inquiry. Also before us is the petition of the Corinthos interests for exoneration from and limitation of liability. The issue presented derives from the Queeny interests' contentions that the Corinthos was at fault for not inerting her tanks and that BP/Sohio

were negligent in failing to have a shore-based inert gas system to be used during discharge of crude cargo.

After careful review of the Queeny interests' contentions, and review of the trial testimony, exhibits and all other supporting evidence, we have concluded that the absence of inerting systems was a contributing cause of the damages. For the following reasons, however, we shall not deny the petition of the Corinthos-BP/Sohio interests for exoneration from liability.

In an uninerted tanker, two of the three elements necessary for combustion are present; fuel, in the form of vapor from the cargo, and oxygen, drawn into the tanks during the discharging operations. The third element necessary for combustion is an ignition source.

An inert flue gas system removes oxygen from the tanks of crude carriers, rendering combustion dependent upon the simultaneous injection of two outside elements; oxygen plus an ignition source.

The system utilizes flue gas, manufactured as a by-product from combustion taking place in the vessel's own boilers. After the gas is cleaned it is pumped into the cargo tanks to displace the vapor and oxygen in the tanks, replacing it with an inert gas.

The Corinthos was not fitted with an inert gas system at the time of her construction, in 1963, nor had she been retrofitted prior to the collision.

The concept of inerting is not new. As early as 1925, Chevron inerted some of its ships. Chevron's lead was followed by Sun Oil, who in 1932, began inerting as a result of an explosion in one of its vessels. Sun Oil inerted ships as small as 16,000 tons. BP Ltd., the parent company of BP/Sohio, has been inerting ships since 1963. Her owners and operators were aware that she was not inerted. However, as early as 1972, the owners and operators had vessels constructed with inert gas systems, and in 1975,

about the time of the collision, they retrofitted a vessel with an inert gas system.

The thrust of the Corinthos interests' argument is that at the time the Corinthos was built (1963) and as late as the time of the collision (1975), there was no requirement, either national or international, that a vessel the size of Corinthos be fitted with an inert gas system. In addition they contend that the explosions which followed the collision would not have been prevented by an inert gas system because the Corinthos' tanks were breached upon the collision, which would have allowed the escape of any inert gas, and the introduction of oxygen.

BP/Sohio contend that the Queeny interests' argument places them in the untenable position of either providing a shore based inert gas system for uninerted tankers, or refusing to allow such tankers to discharge their cargo. They claim that the technology for the shoreside inerting of tankers is not available, and since only a very small percentage of the world's tankers were inerted at the time of the collision, if the Court accepts the Queeny interests' position, BP/Sohio would be forced to cease operations because they would be unable to receive crude for refining.

With regard to the position of the Corinthos interests, we shall grant the petition for exoneration. We reach this decision reluctantly, and despite our strong predilection to deny the petition. In the absence of recently enacted legislation which sets forth the time frame for the retrofitting of varying size crude carriers with an inert gas system, we would hold that the Corinthos was unseaworthy at the time of the collision. *See,* The Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, 92 Stat. 1471 (codified at 33 U.S.C. §§ 1221-1232; 46 U.S.C. §§ 214, 3912).

Though in 1975, no law required the inerting of cargo tanks on vessels the size of the Corinthos, we believe that

at that time, the custom of the industry was insufficient to satisfy common law standards of care. However, the Corinthos interests are fortunate that Congress has entered this field of law, thereby preempting the Courts from deciding this issue.

Under the time sequence contemplated by Congress, vessels the size and age of the Corinthos need not be retrofitted with an inert gas system until May 31, 1983. Congress determined to grant a grace period because of possible ramifications if it acted unilaterally in an area effecting international commerce. Congress chose instead to defer to the schedule and requirements established by the International Maritime Consultative Organization (IMCO).[4]

Though we must defer to the wisdom of Congress, which reached its conclusions only after extensive deliberation on the matter, we feel we would be remiss if we did not express the following thoughts.

The importance of an inert gas system must not be minimized. The instant collision resulted in the loss of 26 lives and numerous other personal injuries. If such tragedies can be prevented by the utilization of an inert gas system, we strongly urge vessel owners and operators to take every feasible step to comply with the adopted legislation prior to the effective date.

We believe the shipping industry has anchored itself to a position which does not meet common law standard of care requirements. Justifications based upon cost, feasibility, and effectiveness are not acceptable.

Moreover, we have reservations whether efficacy serves as an explanation. The expert testimony elicited

4. Congress modified the IMCO Protoculs in certain respects, inter alia, by requiring the retrofitting of inert gas systems on older crude carriers of over 20,000 Dead Weight Tons (DWT) versus 40,000 DWT, and by phasing in the requirement on older carriers effective May 31, 1983.

at trial by both the Queeny and Corinthos interests established beyond question that the risk of explosion or fire is greatly reduced or completely removed when an inert gas system is utilized.

The experts stated that an uninerted tanker which has discharged its cargo of crude has been likened to a floating time bomb. They explained that the enormous build-up of the fuel vapor coupled with the introduction of oxygen results in a circumstance ripe for explosion upon the introduction of an ignition source. By inerting the tanks of crude cargo ships, the highly flammable condition does not develop.

Expert testimony established that even upon the breaching of the cargo tanks, an explosion would not occur. Since a combustible mixture of oxygen and fuel vapor must be present for an explosion to occur upon the introduction of an ignition source, the atmosphere in an inerted tank will not be susceptible to explosion until after the inert gas is replaced by oxygen. In view of the size of the puncture in the Corinthos' tanks, and the fact that additional inert gas may be pumped into the tanks as needed to maintain a non-combustible mixture, oxygen would not have been introduced at such a rapid rate as to instanteously create a dangerous vapor mixture.

We take judicial notice of the fact that few cases have brought this issue to fruition because of the industry's policy of avoiding said issue in those few cases which are not settled.

One case in this circuit, however, did address the issue. In the case of the *Petition of Oskar Tiedemann and Co., (Elna II/Mission San Francisco),* 179 F. Supp. 227 (D. Del. 1959), *Aff'd,* 289 F.2d 237 (3d Cir. 1961), the court determined that the Mission San Francisco was unseaworthy. Its owners were denied both exoneration from and limitation of liability because the vessel was not

equipped with a method to relieve the highly combustible atmosphere in the tanks caused by the discharge of jet fuel. That court discussed both butterworthing and the use of a flue gas system as acceptable methods for relieving the highly combustible condition created in tanks after discharge of crude.

Clearly, if Congress had not preempted this field the law of this circuit would require us to deny the petition of the Corinthos interests for exoneration from or limitation of liability.

Next, we must determine whether BP/Sohio were negligent in failing to have a shore-based inert gas system to be used during discharge or in allowing an uninerted vessel to dock at its pier.

Above, we discussed the mechanics of a flue gas system. The system prevents oxygen from mixing with fuel vapor in cargo tanks. It requires the manufacture of an inert gas which gas then is introduced into the cargo tanks. The inert gas can be manufactured either as a by-product of the fuel burned by the vessel or at a shore-based discharge facility.

Though the available technology for the construction and development of a shipboard system exceeds that for a shore-based facility, many of the principles are the same. With a shore-based system, the inert gas must be pumped to the vessel via a hose connection and then directed to the cargo tanks in much the same manner, through the same piping system, as if the inerting was done by a shipboard system.

Not only do BP/Sohio dispute the feasibility of a shore-based system but also they contend that utilization of a shore-based system would be ineffective once a vessel was underway, because cargo tanks breathe, which would allow the inert gas to leak out.

Though we agree that a ship based system has many advantages, we believe that due to the highly dangerous

nature of this activity, every reasonable safety precaution must be taken to minimize the possibility of explosion.

In the absence of recently enacted legislation, we would not hear BP/Sohio to complain that it would be overly burdensome to require them to provide a shore-based inerting system for non-inerted ships or to turn away non-inerted ships. We are not familiar with any rule of law which would allow a party to successfully defend itself against a claim of negligence or contributory negligence, on the ground that in an effort to save time and money and to avoid a burdensome task it did not undertake the reasonable precautions dictated by the nature of the activity.

Moreover, the fact that a shore-based system may be ineffective once a vessel is underway is irrelevant to the duty of care imposed upon the owners of a crude oil discharge facility. BP/Sohio need not concern themselves with what might happen once a vessel is underway.

However, because Congress has expressed a sensitivity to the practical issues involved in revamping the shipping industry's practice of not inerting crude carriers, we shall be equally accommodative, and not hold BP/Sohio partially responsible for this disaster.

Order of the United States District Court for the Eastern District of Pennsylvania, In the Matter of The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the SS. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability, Civil Action No. 75-364; In the Matter of The Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability, Civil Action No. 75-2110, Filed February 19, 1980.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C.A. NO. 75-364

In the Matter
of

The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the SS EDGAR M. QUEENY, for Exoneration from and Limitation of Liability

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C.A. NO. 75-2110

In the Matter
of

The Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration from and Limitation of Liability

Order

The complaint and petition of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the SS EDGAR M. QUEENY, for Exoneration from and Limitation of Liability is DENIED.

The complaint and petition of Villaneuva Compania Naviera, S.A., Owner of the tank vessel Corinthos, for exoneration from and limitation of liability is GRANTED.

The Court sets Friday February 29, 1980 at 1:30 p.m. for the presenting of evidence on the issue of assessment of damages.

IT IS SO ORDERED.

/s/ CHARLES R. WEINER
Charles R. Weiner

Judgment of the United States Court of Appeals for the Third Circuit, In the Matter of: The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability and Villaneuva Compania Naviera S.A., Amoco Overseas Oil Company and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company and The William Powell Company, Third-Party Defendants; Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1405 and Cross-Appellees, No. 80-1450 and No. 80-1496 and In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants, British Petroleum, Ltd.; B.P. Oil Inc. and Sohio Petroleum Company, Third-Party Defendants, Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1494 and Cross-Appellees, No. 80-1495 and No. 80-1497, Filed May 15, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-1405, 80-1450, 80-1496

In the Matter of:

The Complaint of Bankers Trust Company As Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability

and

VILLANEUVA COMPANIA NAVIERA, S.A., AMOCO OVERSEAS OIL COMPANY and AMOCO TRANSPORT COMPANY,
Third-Party Plaintiffs,

v.

BETHLEHEM STEEL CORPORATION, GENERAL ELECTRIC COMPANY and THE WILLIAM POWELL COMPANY,
Third-Party Defendants

Bankers Trust Company, Monsanto Company and Keystone Shipping Co.,
Appellants at No. 80-1405

BP Oil Inc. and SOHIO Petroleum Company, Claimants,
Appellants at No. 80-1450

Villaneuva Compania Naviera, SA.,
Appellant at No. 80-1496

(D. C. Civil No. 75-0364)

Nos. 80-1494, 80-1495, 80-1497

In the Matter of

Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability

ROYAL GLOBE INSURANCE COMPANY,
Intervenor Pltf.

NATIONAL GRANGE MUTUAL INSURANCE COMPANY and INSURANCE COMPANY OF NORTH AMERICA

v.

BETHLEHEM STEEL CORPORATION and GENERAL ELECTRIC COMPANY and THE WILLIAM POWELL COMPANY,
Third-Party Defts.

BRITISH PETROLEUM, LTD.; B.P. OIL INC. and SOHIO PETROLEUM COMPANY,
Third-Party Defts.

Bankers Trust Company, Monsanto Company and Keystone Shipping Co.,
Appellants at No. 80-1494

BP OIL INC. and SOHIO Petroleum Company, Claimants,
Appellants at No. 80-1495

Villaneuva Compania Naviera, S.A.,
Appellant at No. 80-1497

(D. C. Civil No. 75-2110)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: WEIS and HIGGINBOTHAM, *Circuit Judges* and DEBEVOISE, *District Judge* *

Judgment

These causes came on to be heard on the records from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on January 13, 1981.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, entered February 20, 1980, be, and the same is hereby reversed with respect to its denial of the petition for limitation of liability to Keystone, its holding that the preemption doctrine is applicable as to Villaneuva and to the extent that it made an alternate finding to deny Villaneuva's petition for limitation of liability because it failed to use an inert gas system on the CORINTHOS and the cause remanded for further proceedings consistent with the opinion of this Court. Costs taxed in favor of appellants at No. 80-1405; costs also taxed in favor of appellants at No. 80-1497.

It is further ordered and adjudged by this Court that the appeals at Nos. 80-1450 and 80-1495, be, and the same are hereby dismissed for lack of appellate jurisdiction. Costs taxed against appellants in those cases.

All of the above in accordance with the opinion of this Court.

ATTEST:

SALLY MRVOS
Clerk

May 15, 1981

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* Honorable Dickinson R. Debevoise, United States District Court for the District of New Jersey, sitting by designation.

Amended Judgment of the United States Court of Appeals for the Third Circuit, In the Matter of: The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability and Villaneuva Compania Naviera S.A., Amoco Overseas Oil Company and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company and The William Powell Company, Third-Party Defendants; Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1405 and Cross-Appellees, No. 80-1450 and No. 80-1496 and In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants, British Petroleum, Ltd.; B.P. Oil Inc. and Sohio Petroleum Company, Third-Party Defendants, Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1494 and Cross-Appellees, No. 80-1495 and No. 80-1497, Filed July 24, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-1405, 80-1450 and 80-1496

In the Matter of:

The Complaint of Bankers Trust Company As Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability

and

VILLANEUVA COMPANIA NAVIERA, S.A., AMOCO OVERSEAS OIL COMPANY and AMOCO TRANSPORT COMPANY,
Third-Party Plaintiffs,

v.

BETHLEHEM STEEL CORPORATION, GENERAL ELECTRIC COMPANY and THE WILLIAM POWELL COMPANY,
Third-Party Defendants

Bankers Trust Company, Monsanto Company and Keystone Shipping Co.,
Appellants at No. 80-1405

BP Oil Inc. and SOHIO Petroleum Company, Claimants,
Appellants at No. 80-1450

Villaneuva Compania Naviera, SA.,
Appellant at No. 80-1496

(D. C. Civil No. 75-0364)

Nos. 80-1494, 80-1495 and 80-1497

In the Matter of:

Complaint of VILLANEUVA COMPANIA NAVERIA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability

ROYAL GLOBE INSURANCE COMPANY,
Intervenor Pltf.

NATIONAL GRANGE MUTUAL INSURANCE COMPANY and
INSURANCE COMPANY OF NORTH AMERICA

v.

BETHLEHEM STEEL CORPORATION and
GENERAL ELECTRIC COMPANY and
THE WILLIAM POWELL COMPANY,
Third-Party Defts.

BRITISH PETROLEUM, LTD., B.P. OIL INC. and
SOHIO PETROLEUM COMPANY,
Third-Party Defts.

Bankers Trust Company, Monsanto Company and Keystone Shipping Co.,
Appellants at No. 80-1494

BP OIL INC. and SOHIO Petroleum Company, Claimants,
Appellants at No. 80-1495

Villaneuva Compania Naviera, S.A.,
Appellant at No. 80-1497

(D. C. Civil No. 75-2110)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: WEIS and HIGGINBOTHAM, *Circuit Judges;* and DEBEVOISE, *District Judge.**

Amended Judgment

These causes came on to be heard on the records from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on January 13, 1981.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, entered February 20, 1980, be, and the same is hereby reversed with respect to its denial of the petition for limitation of liability to Bankers Trust Company, Monsanto Company and Keystone Shipping Co., its holding that the preemption doctrine is applicable as to Villaneuva and to the extent that it made an alternate finding to deny Villaneuva's petition for limitation of liability because it failed to use an inert gas system on the CORINTHOS and the case remanded for further proceedings consistent with the opinion of this Court. Costs taxed in favor of appellants at No. 80-1405; costs also taxed in favor of appellants at No. 80-1497.

It is further ordered and adjudged by this Court that the appeals at Nos. 80-1450 and 80-1495, be, and the same are hereby dismissed for lack of appellate jurisdiction. Costs taxed against appellants in those cases.

All of the above in accordance with the opinion of this Court.

ATTEST:

SALLY MRVOS
Clerk

July 24, 1981

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* Honorable Dickinson R. Debevoise, United States District Court Judge for the District of New Jersey, sitting by designation.

Order of the United States Court of Appeals for the Third Circuit, granting Joint Motion of Villaneuva Compania Naviera, S.A., BP Oil Inc. and Sohio Petroleum Company and Bankers Trust Company, Monsanto Company and Keystone Shipping for extension of time to file petition for rehearing from May 29, 1981 to and including June 19, 1981, In the Matter of: The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability and Villaneuva Compania Naviera S.A., Amoco Overseas Oil Company and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company and The William Powell Company, Third-Party Defendants; Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1405 and Cross-Appellees, No. 80-1450 and No. 80-1496 and In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants, British Petroleum, Ltd.; B.P. Oil Inc. and Sohio Petroleum Company, Third-Party Defendants, Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1494 and Cross-Appellees, No. 80-1495 and No. 80-1497, Filed May 26, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-1405, 80-1450, 80-1494, 80-1495,
80-1496 & 80-1497

In the Matter of:

The Complaint of Bankers Trust Company As Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration from and Limitation of Liability

and

VILLANEUVA COMPANIA NAVIERA, S.A.,
AMOCO OVERSEAS OIL COMPANY and
AMOCO TRANSPORT COMPANY,
Third-Party Plaintiffs,

v.

BETHLEHEM STEEL CORPORATION,
GENERAL ELECTRIC COMPANY,
and THE WILLIAM POWELL COMPANY,
Third-Party Defendants

Bankers Trust Company, Monsanto Company and Keystone Shipping Co.,
Appellants in No. 80-1405

BP Oil Inc. and SOHIO Petroleum Company, claimants,
Appellants in No. 80-1450

Villaneuva Compania Naviera, S.A.,
Appellant in No. 80-1496

(D. C. Civil No. 75-0364)

In the Matter of:

Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability
ROYAL GLOBE INSURANCE COMPANY,
Intervenor Pltf.

NATIONAL GRANGE MUTUAL INSURANCE COMPANY AND INSURANCE COMPANY OF NORTH AMERICA

v.

BETHLEHEM STEEL CORPORATION and GENERAL ELECTRIC COMPANY and THE WILLIAM POWELL COMPANY,
Third Party Defts.

v.

BRITISH PETROLEUM, LTD.; B.P. OIL INC. AND SOHIO PETROLEUM COMPANY,
Third Party Defts.

Bankers Trust Company, Monsanto Company and Keystone Shipping Co.,
Appellants in No. 80-1494

BP Oil Inc. and SOHIO Petroleum Company, claimants,
Appellants in No. 80-1495

Villaneuva Compania Naviera, S.A.,
Appellant in No. 80-1497

(D. C. Civil No. 75-2110)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

May 21, 1981

Nos. 80-1405, 80-1450, 80-1494/95/96/97

In the Matter of: The Complaint of Bankers Trust Co., et al. and Villaneuva Compania Naviera, S.A., et al. vs. Bethlehem Steel Corporation, et al.

Bankers Trust Company, et al.,
Appellants in No. 80-1405

BP Oil Inc., et al.,
Appellants in No. 80-1450

Villaneuva Compania Naviera, S.A.,
Appellant in No. 80-1496

In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., etc., etc., et al.; National Grange Mutual Insurance Company, et al. vs. Bethlehem Steel Corporation, et al. vs. British Petroleum, Ltd., et al.

Bankers Trust Company, et al.,
Appellants in No. 80-1494

BP Oil, Inc., et al.,
Appellants in No. 80-1495

Villaneuva Compania Naviera, S.A.,
Appellant in No. 80-1497

SEE ATTACHED SHEET FOR COMPLETE CAPTIONS

Present: HIGGINBOTHAM, *Circuit Judge.*

1. Joint motion of Villaneuva Compania Naviera, S.A., BP Oil Inc. and SOHIO Petroleum Company, and Bankers Trust Company, Monsanto Company and Keystone Shipping for an extension of time to file petition for rehearing from May 29, 1981, to and including June 19, 1981,

in the above-entitled cases in which the opinion was filed and the judgement entered on May 15, 1981.

Respectfully,

/s/ SALLY MRVOS
Sally Mrvos, Clerk

mgp
enc.

The foregoing Motion is granted

By the Court,

/s/ A. LEON HIGGINBOTHAM
Judge

Dated: May 26, 1981

Orders of the United States Court of Appeals for the Third Circuit denying Petitions for Rehearing filed on behalf of Bankers Trust Company, et al, Villaneuva Compania Naviera, S.A., et al and BP Oil, Inc. and Sohio Petroleum Company, In the Matter of: The Complaint of Bankers Trust Company as Owner-Trustee and Monsanto Company as Chartered Owner, and Keystone Shipping Co., As Chartered Owner and Operator of the S.S. EDGAR M. QUEENY, for Exoneration From and Limitation of Liability and Villaneuva Compania Naviera S.A., Amoco Overseas Oil Company and Amoco Transport Company, Third-Party Plaintiffs v. Bethlehem Steel Corporation, General Electric Company and The William Powell Company, Third-Party Defendants; Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1405 and Cross-Appellees, No. 80-1450 and No. 80-1496 and In the Matter of: Complaint of Villaneuva Compania Naviera, S.A., Owner of the tank vessel CORINTHOS, for Exoneration From and Limitation of Liability, Royal Globe Insurance Company, Intervenor Plaintiff, National Grange Mutual Insurance Company and Insurance Company of North America v. Bethlehem Steel Corporation and General Electric Company and The William Powell Company, Third-Party Defendants, British Petroleum, Ltd.; B.P. Oil Inc. and Sohio Petroleum Company, Third-Party Defendants, Bankers Trust Company, Monsanto Company and Keystone Shipping Co., Appellants, No. 80-1494 and Cross-Appellees, No. 80-1495 and No. 80-1497, Filed July 8, 1981.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-1405, 80-1450, 80-1496

In the Matter of:

The Complaint of Bankers Trust Company, et al. and Villaneuva Compania Naviera, S.A., et al. v. Bethlehem Steel Corporation, et al.

Bankers Trust Company, et al.,
Appellants at No. 80-1405

BP Oil Inc., et al.,
Appellants at No. 80-1450

Villaneuva Compania Naviera, SA.,
Appellant at No. 80-1496

Nos. 80-1494, 80-1495, 80-1497

In the Matter of:

Complaint of Villaneuva Compania Naveria, S.A., etc., et al.; National Grange Mutual Insurance Company v. Bethlehem Steel Corporation, et al. v. British Petroleum, Ltd., et al.

Bankers Trust Company, et al.,
Appellants at No. 80-1494

BP Oil Inc., et al.,
Appellants at No. 80-1495

Villaneuva Compania Naviera, S.A.,
Appellant at No. 80-1497

Sur Petition for Rehearing

Present: SEITZ, *Chief Judge,* ALDISERT, ADAMS, GIBBONS, WEIS, and HIGGINBOTHAM, *Circuit Judges,* and DEBEVOISE, *District judge* *.

The petition for rehearing filed by Bankers Trust Company, et al., Appellants in Nos. 80-1405 and 80-1494, in the above entitled cases having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT:

/s/ A. LEON HIGGINBOTHAM
Circuit Judge

Dated: JUL 8 1981

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* Honorable Dickinson R. Debevoise, United States District Court for the District of New Jersey, sitting by designation.

** Judges Hunter, Garth and Sloviter did not participate in the disposition of this petition for rehearing.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-1405, 80-1450, 80-1496

In the Matter of:

The Complaint of Bankers Trust Company, et al. and Villaneuva Compania Naviera, S.A., et al. v. Bethlehem Steel Corporation, et al.

Bankers Trust Company, et al.,
Appellants at No. 80-1405

BP Oil Inc., et al.,
Appellants at No. 80-1450

Villaneuva Compania Naviera, SA.,
Appellant at No. 80-1496

Nos. 80-1494, 80-1495, 80-1497

In the Matter of:

Complaint of Villaneuva Compania Naveria, S.A., etc., et al.; National Grange Mutual Insurance Company v. Bethlehem Steel Corporation, et al. v. British Petroleum, Ltd., et al.

Bankers Trust Company, et al.,
Appellants at No. 80-1494

BP Oil Inc., et al.,
Appellants at No. 80-1495

Villaneuva Compania Naviera, S.A.,
Appellant at No. 80-1497

Sur Petition for Rehearing

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, WEIS, and HIGGINBOTHAM, *Circuit Judges*, and DEBEVOISE, *District judge* *.

The petition for rehearing filed by Villaneuva Compania Naviera, S.A., et al., Appellants in Nos. 80-1496 and 80-1497, in the above entitled cases having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT:

/s/ A. LEON HIGGINBOTHAM
Circuit Judge

Dated: JUL 8 1981

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* Honorable Dickinson R. Debevoise, United States District Court for the District of New Jersey, sitting by designation.

** Judges Hunter, Garth and Sloviter did not participate in the disposition of this petition for rehearing.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-1405, 80-1450, 80-1496

In the Matter of:

The Complaint of Bankers Trust Company, et al. and Villaneuva Compania Naviera, S.A., et al. v. Bethlehem Steel Corporation, et al.

Bankers Trust Company, et al.,
Appellants at No. 80-1405

BP Oil Inc., et al.,
Appellants at No. 80-1450

Villaneuva Compania Naviera, SA.,
Appellant at No. 80-1496

Nos. 80-1494, 80-1495, 80-1497

In the Matter of:

Complaint of Villaneuva Compania Naveria, S.A., etc., et al.; National Grange Mutual Insurance Company v. Bethlehem Steel Corporation, et al. v. British Petroleum, Ltd., et al.

Bankers Trust Company, et al.,
Appellants at No. 80-1494

BP Oil Inc., et al.,
Appellants at No. 80-1495

Villaneuva Compania Naviera, S.A.,
Appellant at No. 80-1497

Sur Petition for Rehearing

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, WEIS, and HIGGINBOTHAM, *Circuit Judges*, and DEBEVOISE, *District judge* *.

The petition for rehearing filed by BP Oil, Inc. and Sohio Petroleum Company, Appellants in Nos. 80-1450 and 80-1495, in the above entitled cases having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT:

/s/ A. LEON HIGGINBOTHAM
Circuit Judge

Dated: JUL 8 1981

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* Honorable Dickinson R. Debevoise, United States District Court for the District of New Jersey, sitting by designation.

** Judges Hunter, Garth and Sloviter did not participate in the disposition of this petition for rehearing.

Order of the Supreme Court of the United States Extending Time to File a Petition for Writ of Certiorari, Bankers Trust Company, et al, Petitioners v. Villaneuva Compania Naviera, S.A., Respondent, No. A-263.

SUPREME COURT OF THE UNITED STATES

No. A-263

BANKERS TRUST COMPANY, ET AL.,
Petitioners

v.

VILLANEUVA COMPANIA NAVIERA, S.A.

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 5, 1981.

/s/ WILLIAM J. BRENNAN, JR.
Associate Justice of the Supreme Court of the United States

Dated this 30th
day of September, 1981

Ports and Waterways Safety Act of 1972, Pub. L. No. 92-340, 86 Stat. 424 (Amended by Port and Tanker Safety Act of 1978).

Ports and Waterways Safety Act of 1972

An Act to promote the safety of ports, harbors, waterfront areas, and navigable waters of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Ports and Waterways Safety Act of 1972".

TITLE I—PORTS AND WATERWAYS SAFETY AND ENVIRONMENTAL QUALITY

Sec. 101. In order to prevent damage to, or the destruction or loss of any vessel, bridge, or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to those waters; and to protect the navigable waters and the resources therein from environmental harm resulting from vessel or structure damage, destruction, or loss, the Secretary of the department in which the Coast Guard is operating may—

(1) establish, operate, and maintain vessel traffic services and systems for ports, harbors, and other waters subject to congested vessel traffic;

(2) require vessels which operate in an area of a vessel traffic service or system to utilize or comply with that service or system, including the carrying or installation of electronic or other devices necessary for the use of the service or system;

(3) control vessel traffic in areas which he determines to be especially hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

(i) specifying times of entry, movement, or departure to, from, within, or through ports, harbors, or other waters;

(ii) establishing vessel traffic routing schemes;

(iii) establishing vessel size and speed limitation and vessel operating conditions; and

(iv) restricting vessel operation, in a hazardous area or under hazardous conditions, to vessels which have particular operating characteristics and capabilities which he considers necessary for safe operation under the circumstances;

(4) direct the anchoring, mooring, or movement of a vessel when necessary to prevent damage to or by that vessel or her cargo, stores, supplies, or fuel;

(5) require pilots on self-propelled vessels engaged in the foreign trades in areas and under circumstances where a pilot is not otherwise required by State law to be on board until the State having jurisdiction of an area involved establishes a requirement for a pilot in that area or under the circumstances involved;

(6) establish procedures, measures, and standards for the handing, loading, discharge, storage, stowage, and movement, including the emergency removal, control and disposition, of explosives or other dangerous articles or substances (including the substances described in section 4417a(2) (A), (B), and (C) of the Revised Statutes of the United States (46 U. S. C. 391a(2) (A), (B), and (C)) on structures subject to this title;

(7) prescribe minimum safety equipment requirements for structures subject to this title to assure adequate protection from fire, explosion, natural disasters, and other serious accidents or casualties;

(8) establish water or waterfront safety zones or other measures for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area; and

(9) establish procedures for examination to assure compliance with the minimum safety equipment requirements for structures.

Sec. 102. (a) For the purpose of this Act, the term "United States" includes the fifty States, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Nothing contained in this title supplants or modifies any treaty or Federal statute or authority granted thereunder, nor does it prevent a State or political subdivision thereof from prescribing for structures only higher safety equipment requirements or safety standards than those which may be prescribed pursuant to this title.

(c) In the exercise of his authority under this title, the Secretary shall consult with other Federal agencies, as appropriate, in order to give due consideration to their statutory and other responsibilities, and to assure consistency of regulations applicable to vessels, structures, and areas covered by this title. The Secretary may also consider, utilize, and incorporate regulations or similar directory materials issued by port or other State and local authorities.

(d) This title shall not be applicable to the Panama Canal. The authority granted to the Secretary under section 101 of this title shall not be delegated with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation. Any other authority granted the Secretary under this title shall be delegated to the Saint Lawrence Seaway Development Corporation to the extent that the Secretary determines such delegation is necessary for the proper operation of the Seaway.

(e) In carrying out his duties and responsibilities under this title to promote the safe and efficient conduct of maritime commerce the Secretary shall consider fully the wide variety of interests which may be affected by the exercise of his authority hereunder. In determining the need for, and the substance of, any rule or regulation or the exercise of other authority hereunder the Secretary shall, among other things, consider—

(1) the scope and degree of the hazards;

(2) vessel traffic characteristics including minimum interference with the flow of commercial traffic, traffic volume, the sizes and types of vessels, the usual nature of local cargoes, and similar factors;

(3) port and waterway configurations and the differences in geographic, climatic, and other conditions and circumstances;

(4) environmental factors;

(5) economic impact and effects;

(6) existing vessel traffic control systems, services and schemes; and

(7) local practices and customs, including voluntary arrangements and agreements within the maritime community.

Sec. 103. The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to, any structure subject to this title, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States. In any investigation under this title, the Secretary may issue a subpena to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Witnesses may be paid fees for travel and attendance at rates not exceeding those allowed in a district court of the United States.

Sec. 104. The Secretary may issue reasonable rules, regulations, and standards necessary to implement this title. In the exercise of his rulemaking authority the Secretary is subject to the provisions of chapters 5 and 7 of title 5, United States Code. In preparing proposed rules, regulations, and standards, the Secretary shall provide an adequate opportunity for consultation and comment to State and local governments, representatives of the marine industry, port and harbor authorities, environmental groups, and other interested parties.

Sec. 105. The Secretary shall, within one year after the effective date of this Act, report to the Congress his recommendations for legislation which may be necessary to achieve coordination and/or eliminate duplication between the functions authorized by this Act and the functions of any other agencies.

Sec. 106. Whoever violates a regulation issued under this title shall be liable to a civil penalty of not more than $10,000. The Secretary may assess and collect any civil penalty incurred under this title and, in his discretion, remit, mitigate, or compromise any penalty. Upon failure to collect or compromise a penalty, the Secretary may request the Attorney General to commence an action for collection in any district court of the United States. A vessel used or employed in a violation of a regulation under this title shall be liable in rem and may be proceeded against in any district court of the United States having jurisdiction.

Sec. 107. Whoever willfully violates a regulation issued under this title shall be fined not less than $5,000 or more than $50,000 or imprisoned for not more than five years, or both.

TITLE II—VESSELS CARRYING CERTAIN CARGOES IN BULK

Sec. 201. Section 4417a of the Revised Statutes of the United States (46 U. S. C. 391a) [5] is hereby amended to read as follows:

"Sec. 4417a. (1) Statement of Policy.—The Congress hereby finds and declares—

> "That the carriage by vessels of certain cargoes in bulk creates substantial hazards to life, property, the navigable waters of the United States (including the quality thereof) and the resources contained therein and of the adjoining land, including but not limited to fish, shellfish, and wildlife, marine and coastal ecosystems and recreational and scenic values,

5. 46 U. S. C. A. § 391a.

which waters and resources are hereafter in this section referred to as the 'marine environment'.

"That existing standards for the design, construction, alteration, repair, maintenance and operation of such vessels must be improved for the adequate protection of the marine environment.

"That it is necessary that there be established for all such vessels documented under the laws of the United States or entering the navigable waters of the United States comprehensive minimum standards of design, construction, alteration, repair, maintenance, and operation to prevent or mitigate the hazards to life, property, and the marine environment.

(2) Vessels Included.—All vessels, regardless of tonnage size, or manner of propulsion, and whether self-propelled or not, and whether carrying freight or passengers for hire or not, which are documented under the laws of the United States or enter the navigable waters of the United States, except public vessels other than those engaged in commercial service, that shall have on board liquid cargo in bulk which is—

"(A) inflammable or combustible, or

"(B) oil, of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, or

"(C) designated as a hazardous polluting substance under section 12(a) of the Federal Water Pollution Control Act (33 U. S. C. 1162);

shall be considered steam vessels for the purposes of title 52 of the Revised Statutes of the United States and shall

be subject to the provisions thereof: *Provided,* That this section shall not apply to vessels having on board the substances set forth in (A), (B), or (C) above only for use as fuel or stores or to vessels carrying such cargo only in drums, barrels, or other packages: *And provided further,* That nothing contained herein shall be deemed to amend or modify the provisions of section 4 of Public Law 90-397 with respect to certain vessels of not more than five hundred gross tons: *And provided further,* That this section shall not apply to vessels of not more than five hundred gross tons documented in the service of oil exploitation which are not tank vessels and which would be subject to this section only because of the transfer of fuel from the vessels' own fuel supply tanks to offshore drilling or production facilities.

"(3) Rules and Regulations.—In order to secure effective provision (A) for vessel safety, and (B) for protection of the marine environment, the Secretary of the department in which the Coast Guard is operating (hereafter referred to in this section as the 'Secretary') shall establish for the vessels to which this section applies such additional rules and regulations as may be necessary with respect to the design and construction, alteration, repair, and maintenance of such vessels, including, but not limited to, the superstructures, hulls, places for stowing and carrying such cargo, fittings, equipment, appliances, propulsive machinery, auxiliary machinery, and boilers thereof; and with respect to all materials used in such construction, alteration, or repair; and with respect to the handling and stowage of such cargo, the manner of such handling or stowage, and the machinery and appliances used in such handling and stowage; and with respect to equipment and appliances for life saving, fire protection, and the prevention and mitigation of damage to the marine environ-

ment; and with respect to the operation of such vessels; and with respect to the requirements of the manning of such vessels and the duties and qualifications of the officers and crew thereof; and with respect to the inspection of all the foregoing. In establishing such rules and regulations the Secretary may, after hearing as provided in subsection (4), adopt rules of the American Bureau of Shipping or similar American classification society for classed vessels insofar as such rules pertain to the efficiency of hulls and the reliability of machinery of vessels to which this section applies. In establishing such rules and regulations, the Secretary shall give due consideration to the kinds and grades of such cargo permitted to be on board such vessel. In establishing such rules and regulations the Secretary shall, after consultation with the Secretary of Commerce and the Administrator of the Environmental Protection Agency, identify those established for protection of the marine environment and those established for vessel safety.

"(4) Adoption of Rules and Regulations.—Before any rules or regulations, or any alteration, amendment, or repeal thereof, are approved by the Secretary under the provisions of this section, except in an emergency, the Secretary shall (A) consult with other appropriate Federal departments and agencies, and particularly with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, with regard to all rules and regulations for the protection of the marine environment, (B) publish proposed rules and regulations, and (C) permit interested persons an opportunity for hearing. In prescribing rules or regulations, the Secretary shall consider, among other things, (i) the need for such rules or regulations, (ii) the extent to which such rules or regulations will contribute to safety or protection of the marine

environment, and (iii) the practicability of compliance therewith, including cost and technical feasibility.

"(5) Rules and Regulations for Safety; Inspection; Permits; Foreign Vessels.—No vessel subject to the provisions of this section shall, after the effective date of the rules and regulations for vessel safety established hereunder, have on board such cargo, until a certificate of inspection has been issued to such vessel in accordance with the provisions of title 52 of the Revised Statutes of the United States and until a permit has been endorsed on such certificate of inspection by the Secretary, indicating that such vessel is in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder, and showing the kinds and grades of such cargo that such vessel may have on board or transport. Such permit shall not be endorsed by the Secretary on such certificate of inspection until such vessel has been inspected by the Secretary and found to be in compliance with the provisions of this section and the rules and regulations for vessel safety established hereunder. For the purpose of such inspection, approved plans and certificates of class of the American Bureau of Shipping or other recognized classification society for classed vessels may be accepted as evidence of the structural efficiency of the hull and the reliability of the machinery of such classed vessels except as far as existing law places definite responsibility on the Coast Guard. A certificate issued under the provisions of this section shall be valid for a period of time not to exceed the duration of the certificate of inspection on which such permit is endorsed, and shall be subject to revocation by the Secretary whenever he shall find that the vessel concerned does not comply with the conditions upon which such permit was issued: *Provided,* That rules and regulations for vessel

safety established hereunder and the provisions of this subsection shall not apply to vessels of a foreign nation having on board a valid certificate of inspection recognized under law or treaty by the United States: *And provided further,* That no permit shall be issued under the provisions of this section authorizing the presence on board any vessel of any of the materials expressly prohibited from being thereon by subsection (3) of section 4472 of this title.

"(6) Rules and Regulations for Protection of the Marine Environment; Inspection; Certification.—No vessel subject to the provisions of this section shall, after the effective date of rules and regulations for protection of the marine environment, have on board such cargo, until a certificate of compliance, or an endorsement on the certificate of inspection for domestic vessels, has been issued by the Secretary indicating that such vessel is in compliance with such rules and regulations. Such certificate of compliance or endorsement shall not be issued by the Secretary until such vessel has been inspected by the Secretary and found to be in compliance with the rules and regulations for protection of the marine environment established hereunder. A certificate of compliance or an endorsement issued under this subsection shall be valid for a period specified therein by the Secretary and shall be subject to revocation whenever the Secretary finds that the vessel concerned does not comply with the conditions upon which such certificate or endorsement was issued.

"(7) Rules and Regulations for Protection of the Marine Environment Relating to Vessel Design and Construction, Alteration, and Repair; International Agreement.—(A) The Secretary shall begin publication as soon as practicable of proposed rules and regulations setting forth minimum standards of design, construction, altera-

tion, and repair of the vessels to which this section applies for the purpose of protecting the marine environment. Such rules and regulations shall, to the extent possible, include but not be limited to standards to improve vessel maneuvering and stopping ability and otherwise reduce the possibility of collision, grounding, or other accident, to reduce cargo loss following collision, grounding, or other accident, and to reduce damage to the marine environment by normal vessel operations such as ballasting and deballasting, cargo handling, and other activities.

"(B) The Secretary shall cause proposed rules and regulations published by him pursuant to subsection (7)(A) to be transmitted to appropriate international forums for consideration as international standards.

"(C) Rules and regulations published pursuant to subsection (7)(A) shall be effective not earlier than January 1, 1974, unless the Secretary shall earlier establish rules and regulations consonant with international treaty, convention, or agreement, which generally address the regulation of similar topics for the protection of the marine environment. In the absence of the promulgation of such rules and regulations consonant with international treaty, convention, or agreement, the Secretary shall establish an effective date not later than January 1, 1976, for rules and regulations previously published pursuant to this subsection (7) which he then deems appropriate.

"(D) Any rule or regulation for protection of the marine environment promulgated pursuant to this subsection (7) shall be equally applicable to foreign vessels and United States-flag vessels operating in the foreign trade. If a treaty, convention, or agreement provides for reciprocity of recognition of certificates or other documents to be issued to vessels by countries party thereto, which

evidence compliance with rules and regulations issued pursuant to such treaty, convention, or agreement, the Secretary, in his discretion, may accept such certificates or documents as evidence of compliance with such rules and regulations in lieu of the certificate of compliance otherwise required by subsection (6) of this section.

"(8) Shipping Documents.—Vessels subject to the provisions of this section shall have on board such shipping documents as may be prescribed by the Secretary indicating the kinds, grades, and approximate quantities of such cargo on board such vessel, the shippers and consignees thereof, and the location of the shipping and destination points.

"(9) Officers; Tankermen; Certification.—(A) In all cases where the certificate of inspection does not require at least two licensed officers, the Secretary shall enter in the permit issued to any vessel under the provisions of this section the number of the crew required to be certified as tankermen.

"(B) The Secretary shall issue to applicants certificates as tankermen, stating the kinds of cargo the holder of such certificate is, in the judgment of the Secretary, qualified to handle aboard vessels with safety, upon satisfactory proof and examination, in form and manner prescribed by the Secretary, that the applicant is in good physical condition, that such applicant is trained in and capable efficiently to perform the necessary operations aboard vessels having such cargo on board, and that the applicant fulfills the qualifications of tankermen as prescribed by the Secretary under the provisions of this section. Such certificates shall be subject to suspension or revocation on the same grounds and in the same manner and with like procedure as is provided in the case of sus-

pension or revocation of licenses of officers under the provisions of section 4450 of this title.

"(10) Effective Date of Rules and Regulations.—Except as otherwise provided herein, the rules and regulations to be established pursuant to this section shall become effective ninety days after their promulgation unless the Secretary shall for good cause fix a different time. If the Secretary shall fix an effective date later than ninety days after such promulgation, his determination to fix such a later date shall be accompanied by an explanation of such determination which he shall publish and transmit to the Congress.

"(11) Penalties.—(A) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall violate the provisions of this section or the the rules and regulations established hereunder, shall be liable to a civil penalty of not more than $10,000.

"(B) The owner, master, or person in charge of any vessel subject to the provisions of this section, or any or all of them, who shall knowingly and willfully violate the provisions of this section or the rules and regulations established hereunder, shall be subject to a fine of not less than $5,000 or more than $50,000, or imprisonment for not more than five years, or both.

"(C) Any vessel subject to the provisions of this section, which shall be in violation of this section or the rules and regulations established hereunder, shall be liable in rem and may be proceeded against in the United States district court for any district in which the vessel may be found.

"(12) Injunctive Proceedings.—The United States district courts shall have jurisdiction for cause shown to

restrain violations of this section or the rules and regulations promulgated hereunder.

"(13) Denial of Entry.—The Secretary may, subject to recognized principles of international law, deny entry into the navigable waters of the United States to any vessel not in compliance with the provisions of this section or the regulations promulgated thereunder."

Sec. 202. Regulations previously issued under statutory provisions repealed, modified, or amended by this title shall continue in effect as though promulgated under the authority of section 4417a of the Revised Statutes of the United States (46 U. S. C. 391a), as amended by this title, until expressly abrogated, modified, or amended by the Secretary of the Department in which the Coast Guard is operating under the regulatory authority of such section 4417a as so amended. Any proceeding under such section 4417a for a violation which occurred before the effective date of this title may be initiated or continued to conclusion as though such section 4417a had not been amended hereby.

Sec. 203. The Secretary of the Department in which the Coast Guard is operating shall, for a period of ten years following the enactment of this title, make a report to the Congress at the beginning of each regular session, regarding his activities under this title. Such report shall include but not be limited to (A) a description of the rules and regulations prescribed by the Secretary (i) to improve vessel maneuvering and stopping ability and otherwise reduce the risks of collisions, groundings, and other accidents, (ii) to reduce cargo loss in the event of collisions, groundings, and other accidents, and (iii) to reduce damage to the marine environment from the normal operation of the vessels to which this title applies, (B) the

progress made with respect to the adoption of international standards for the design, construction, alteration, and repair of vessels to which this title applies for protection of the marine environment, and (C) to the extent that the Secretary finds standards with respect to the designs, construction, alteration, and repair of vessels for the purposes set forth in (A) (i), (ii), or (iii) above not possible, an explanation of the reasons therefor.

Approved July 10, 1972.

Port and Tanker Safety Act of 1978, Pub. No. 95-474, 92 Stat. 1471 (codified at 33 U. S. C. §§ 1221-1232; 46 U. S. C. §§ 124, 391a).

An Act

To amend the Ports and Waterways Safety Act of 1972, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Port and Tanker Safety Act of 1978".

SEC. 2. PORTS AND WATERWAYS SAFETY AND PROTECTION OF THE MARINE ENVIRONMENT.

The Ports and Waterways Act of 1972 (Public Law 92-340, 86 Stat. 424) is amended to read as follows:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Ports and Waterways Safety Act'.

"SEC. 2. STATEMENT OF POLICY.

"The Congress finds and declares—

"(a) that navigation and vessel safety and protection of the marine environment are matters of major national importance;

"(b) that increased vessel traffic in the Nation's ports and waterways creates substantial hazard to life, property, and the marine environment;

"(c) that increased supervision of vessel and port operations is necessary in order to—

"(1) reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment;

"(2) prevent damage to structures in, on, or immediately adjacent to the navigable waters of the United States or the resources within such waters;

"(3) insure that vessels operating in the navigable waters of the United States shall comply with all applicable standards and requirements for vessel construction, equipment, manning, and operational procedures; and

"(4) insure that the handling of dangerous articles and substances in, on, or immediately adjacent to the navigable waters of the United States is conducted in accordance with established standards and requirements; and

"(d) that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other Federal agencies, State representatives, affected users, and the general public, in the development and implementation of such measures.

"SEC. 3. DEFINITIONS.—As used in this Act, unless the context otherwise requires—

"(1) 'Marine environment' means the navigable waters of the United States and the land and resources therein and thereunder; the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority; the seabed and subsoil of the Outer Continental Shelf of the United States, the resources thereof and the waters superjacent thereto; and the recreational, economic, and scenic values of such waters and resources.

"(2) 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

"(3) 'State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

"(4) 'United States', when used in geographical context, means all the States thereof.

"SEC. 4. VESSEL OPERATING REQUIREMENTS.

"(a) IN GENERAL.—Subject to the requirements of section 5, the Secretary may—

"(1) in any port or place under the jurisdiction of the United States, in the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to section 11, establish, operate, and maintain vessel traffic services, consisting of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment and may include, but need not be limited to one or more of the following: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways;

"(2) require vessels which operate in an area of a vessel traffic service to utilize or comply with that service;

"(3) require vessels to install and use specified navigation equipment, communications equipment,

electronic relative motion analyzer equipment, or any electronic or other device necessary to comply with a vessel traffic service or which is necessary in the interests of vessel safety: *Provided*, That the Secretary shall not require fishing vessels under 300 gross tons or recreational vessels 65 feet or less to possess or use the equipment or devices required by this subsection solely under the authority of this Act;

"(4) control vessel traffic in areas subject to the jurisdiction of the United States which the Secretary determines to be hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

"(A) specifying times of entry, movement, or departure;

"(B) establishing vessel traffic routing schemes;

"(C) establishing vessel size, speed, draft limitations and vessel operating conditions; and

"(D) restricting operation, in any hazardous area or under hazardous conditions, to vessels which have particular operating characteristics or capabilities which he considers necessary for safe operation under the circumstances; and

"(5) require the receipt of prearrival messages from any vessel, destined for a port or place subject to the jurisdiction of the United States, in sufficient time to permit advance vessel traffic planning prior to port entry, which shall include any information which is not already a matter of record and which the Secretary determines necessary for the control of the vessel and the safety of the port or the marine environment.

"(b) SPECIAL POWERS.—The Secretary may order any vessel, in a port or place subject to the jurisdiction of the United States or in the navigable waters of the United States, to operate or anchor in a manner he directs if—

"(1) he has reasonable cause to believe such vessel does not comply with any regulation issued under this Act or any other applicable law or treaty;

"(2) he determines that such vessel does not satisfy the conditions for port entry set forth in section 9; or

"(3) by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, he is satisfied that such directive is justified in the interest of safety.

"(c) PORT ACCESS ROUTES.—(1) In order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States, and subject to the requirements of paragraph (3) hereof, the Secretary shall designate necessary fairways and traffic separation schemes for vessels operating in the territorial sea of the United States and in high seas approaches, outside the territorial sea, to such ports or places. Such a designation shall recognize, within the designated area, the paramount right of navigation over all other uses.

"(2) No designation may be made by the Secretary pursuant to this subsection, if such a designation, as implemented, would deprive any person of the effective exercise of a right granted by a lease or permit executed or issued under other applicable provisions of law: *Provided*, That such right has become vested prior to the time of publication of the notice required by clause (A) of para-

graph (3) hereof: *Provided, further,* That the determination as to whether the designation would so deprive any such person shall be made by the Secretary, after consultation with the responsible official under whose authority the lease was executed or the permit issued.

"(3) Prior to making a designation pursuant to paragraph (1) hereof, and in accordance with the requirements of section 5, the Secretary shall—

"(A) within six months after date of enactment of this Act (and may, from time to time thereafter), undertake a study of the potential traffic density and the need for safe access routes for vessels in any area for which fairways or traffic separation schemes are proposed or which may otherwise be considered and shall publish notice of such undertaking in the Federal Register;

"(B) in consultation with the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Secretary of the Army, and the Governors of affected States, as their responsibilities may require, take into account all other uses of the area under consideration (including, as appropriate, the exploration for, or exploitation of, oil, gas, or other mineral resources, the construction or operation of deepwater ports or other structures on or above the seabed or subsoil of the submerged lands or the Outer Continental Shelf of the United States, the establishment or operation of marine or estuarine sanctuaries, and activities involving recreational or commercial fishing); and

"(C) to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved.

"(4) In carrying out his responsibilities under paragraph (3), the Secretary shall proceed expeditiously to complete any study undertaken. Thereafter, he shall promptly issue a notice of proposed rulemaking for the designation contemplated or shall have published in the Federal Register a notice that no designation is contemplated as a result of the study and the reason for such determination.

"(5) In connection with a designation made pursuant to this subsection, the Secretary—

"(A) shall issue reasonable rules and regulations governing the use of such designated areas, including the applicability of rules 9 and 10 of the International Regulations for Preventing Collisions at Sea, 1972, relating to narrow channels and traffic separation schemes, respectively, in waters where such regulations apply;

"(B) to the extent that he finds reasonable and necessary to effectuate the purposes of the designation, make the use of designated fairways and traffic separate schemes mandatory for specific types and sizes of vessels, foreign and domestic, operating in the territorial sea of the United States and for specific types and sizes of vessels of the United States operating on the high seas beyond the territorial sea of the United States;

"(C) may, from time to time, as necessary, adjust the location or limits of designated fairways or traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise: *Provided,* That such an adjustment will not, in the judgment of the Secretary, unacceptably adversely affect the purpose for which

the existing designation was made and the need for which continues; and

"(D) shall, through appropriate channels, (i) notify cognizant international organizations of any designation, or adjustment thereof, and (ii) take action to seek the cooperation of foreign States in making it mandatory for vessels under their control to use any fairway or traffic separation scheme designated pursuant to this subsection in any area of the high seas, to the same extent as required by the Secretary for vessels of the United States.

"(d) EXCEPTION.—Except pursuant to international treaty, convention, or agreement, to which the United States is a party, this Act shall not apply to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the United States and that is in—

"(1) innocent passage through the territorial sea of the United States, or

"(2) transit through the navigable waters of the United States which form a part of an international strait.

"SEC. 5. CONSIDERATIONS BY SECRETARY.

"In carrying out his duties and responsibilities under section 4, the Secretary shall—

"(a) take into account all relevant factors concerning navigation and vessel safety and protection of the marine environment, including but not limited to—

"(1) the scope and degree of the risk or hazard involved;

"(2) vessel traffic characteristics and trends, including traffic volume, the sizes and types of vessels involved, potential interference with the flow of commercial traffic, the presence of any unusual cargoes, and other similar factors;

"(3) port and waterway configurations and variations in local conditions of geography, climate, and other similar factors;

"(4) the need for granting exemptions for the installation and use of equipment or devices for use with vessel traffic services for certain classes of small vessels, such as self-propelled fishing vessels and recreational vessels;

"(5) the proximity of fishing grounds, oil and gas drilling and production operations, or any other potential or actual conflicting activity;

"(6) environmental factors;

"(7) economic impact and effects;

"(8) existing vessel traffic services; and

"(9) local practices and customs, including voluntary arrangements and agreements within the maritime community; and

"(b) at the earliest possible time, consult with and receive and consider the views of representatives of the maritime community, ports and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed actions.

"SEC. 6. WATERFRONT SAFETY.

"(a) IN GENERAL.—The Secretary may take such action as is necessary to—

"(1) prevent damage to, or the destruction of, any bridge or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters; and

"(2) protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss. Such action may include, but need not be limited to—

"(A) establishing procedures, measures, and standards for the handling, loading, unloading, storage, stowage, and movement on the structure (including the emergency removal, control, and disposition) of explosives or other dangerous articles and substances, including oil or hazardous material as those terms are defined in section 4417a of the Revised Statutes, as amended;

"(B) prescribing minimum safety equipment requirements for the structure to assure adequate protection from fire, explosion, natural disaster, and other serious accidents or casualties;

"(C) establishing water or waterfront safety zones, or other measures for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area; and

"(D) establishing procedures for examination to assure compliance with the requirements prescribed under this section.

"(b) STATE LAW.—Nothing contained in this section, with respect to structures, prohibits a State or political subdivision thereof from prescribing higher safety equipment requirements or safety standards than those which may be presented by regulations hereunder.

"SEC. 7. PILOTAGE.

"The Secretary may require federally licensed pilots on any self-propelled vessel, foreign or domestic, engaged in the foreign trade, when operating in the navigable waters of the United States in areas and under circumstances where a pilot is not otherwise required by State law. Any such requirement shall be terminated when the State having jurisdiction over the area involved establishes a requirement for a State licensed pilot and has so notified the Secretary.

"SEC. 8. INVESTIGATORY POWERS.

"(a) SECRETARY.—The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to, any structure subject to this Act, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States.

"(b) POWERS.—In an investigation under this section, the Secretary may issue subpenas to require the attendance of witnesses and the production of documents or other evidence relating to such incident, accident, or act. If any person refuses to obey a subpena, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance with the subpena. Any district court of the United States may, in the case of refusal to obey a subpena, issue an order requiring compliance with the subpena, and failure to obey the order may be punished by the court as contempt. Witnesses may be paid fees for travel and attendance at rates not exceeding those allowed in a district court of the United States.

"SEC. 9. CONDITIONS FOR ENTRY TO PORTS OF THE UNITED STATES.

"(a) IN GENERAL.—No vessel, subject to the provisions of section 4417a of the Revised Statutes, as amended, shall operate in the navigable waters of the United States or transfer cargo or residue in any port or place under the jurisdiction of the United States, if such vessel—

"(1) has a history of accidents, pollution incidents, or serious repair problems which, as determined by the Secretary, creates reason to believe that such vessel may be unsafe or may create a threat to the marine environment; or

"(2) fails to comply with any applicable regulation issued under this Act, under section 4417a of the Revised Statutes, as amended, or under any other applicable law or treaty; or

"(3) discharges oil or hazardous material in violation of any law of the United States or in a manner or quantities inconsistent with the provisions of any treaty to which the United States is a party; or

"(4) does not comply with any applicable vessel traffic service requirements; or

"(5) is manned by one or more officers who are licensed by a certificating state which the Secretary has determined, pursuant to section 4417a(11) of the Revised Statutes, as amended, does not have standards for licensing and certification of seafarers which are comparable to or more stringent than United States standards or international standards which are accepted by the United States; or

"(6) is not manned in compliance with manning levels as determined by the Secretary to be necessary to insure the safe navigation of the vessel; or

"(7) while underway, does not have at least one licensed deck officer on the navigation bridge who is capable of clearly understanding English.

"(b) EXCEPTIONS.—The Secretary may allow provisional entry of a vessel not in compliance with subsection (a), if the owner or operator of such vessel proves, to the satisfaction of the Secretary, that such vessel is not unsafe or a threat to the marine environment, and if such entry is necessary for the safety of the vessel or persons aboard. In addition, paragraphs (1), (2), (3), and (4) of subsection (a) shall not apply if the owner or operator of such vessel proves, to the satisfaction of the Secretary, that such vessel is no longer unsafe or a threat to the marine environment, and is no longer in violation of any applicable law, treaty, regulation or condition, as appropriate. Clauses (5) and (6) of subsection (a) shall become applicable eighteen months after the effective date of this section.

"SEC. 10. APPLICABILITY.

"This Act shall not apply to the Panama Canal. The authority granted to the Secretary under sections 4, 5, 6, and 7 of this Act shall not be delegated with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation. Any other authority granted the Secretary under this Act shall be delegated to the Saint Lawrence Seaway Development Corporation to the extent he determines such delegation is necessary for the proper operation of the Saint Lawrence Seaway.

"SEC. 11. INTERNATIONAL AGREEMENTS.

"(a) TRANSMITTAL OF REGULATIONS.—The Secretary shall transmit, via the Secretary of State, to appropriate international bodies or forums, any regulations issued under this Act, for consideration as international standards.

"(b) AGREEMENTS.—The President is authorized and encouraged to—

"(1) enter into negotiations and conclude and execute agreements with neighboring nations, to establish compatible vessel standards and vessel traffic services, and to establish, operate, and maintain international vessel traffic services, in areas and under circumstances of mutual concern; and

"(2) enter into negotiations, through appropriate international bodies, and conclude and execute agreements to establish vessel traffic services in appropriate areas of the high seas.

"(c) OPERATIONS.—The Secretary, pursuant to any agreement negotiated under subsection (b) which is binding upon the United States in accordance with constitutional requirements, may—

"(1) require vessels in the vessel traffic service area to utilize or to comply with the vessel traffic service, including the carrying or installation of equipment and devices as necessary for the use of the service; and

"(2) waive, by order or regulation, the application of any United States law or regulation concerning the design, construction, operation, equipment, personnel qualifications, and manning standards for vessels operating in waters over which the United States exercises jurisdiction if such vessel is not en route to or from a United States port or place, and if vessels en route to or from a United States port or place are accorded equivalent waivers of laws and regulations of the neighboring nation, when operating in waters over which that nation exercises jurisdiction.

"SEC. 12. REGULATIONS.

"(a) IN GENERAL.—In accordance with the provisions of section 553 of title 5, United States Code, as amended, the Secretary shall issue, and may from time to time amend or repeal, regulations necessary to implement this Act.

"(b) PROCEDURES.—The Secretary, in the exercise of this regulatory authority, shall establish procedures for consulting with, and receiving and considering the views of all interested parties, including—

"(1) interested Federal departments and agencies,

"(2) officials of State and local governments,

"(3) representatives of the maritime community,

"(4) representatives of port and harbor authorities or associations,

"(5) representatives of environmental groups,

"(6) any other interested parties who are knowledgeable or experienced in dealing with problems involving vessel safety, port and waterways safety, and protection of the marine environment, and

"(7) advisory committees consisting of all interested segments of the public when the establishment of such committees is considered necessary because the issues involved are highly complex or controversial.

"SEC. 13. ENFORCEMENT.

"(a) CIVIL PENALTY.—(1) Any person who is found by the Secretary, after notice and an opportunity for a hearing, to have violated this Act or a regulation issued

hereunder shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

"(2) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

"(3) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

"(b) CRIMINAL PENALTY.—(1) Any person who willfully and knowingly violates this Act or any regulation issued hereunder shall be fined not more than $50,000 for each violation or imprisoned for not more than five years, or both.

"(2) Any person who, in the willfull and knowing violation of this Act or of any regulation issued hereunder, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the provisions of this Act or the regulations issued hereunder, shall, in lieu of the penalties prescribed in paragraph (1), be fined not more

than $100,000, or imprisoned for not more than ten years, or both.

"(c) IN REM LIABILITY.—Any vessel subject to the provisions of this Act, which is used in violation of this Act, or any regulations issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to subsection (a) and may be proceeded against in the United States district court for any district in which such vessel may be found.

"(d) INJUNCTION.—The United States district courts shall have jurisdiction to restrain violations of this Act or of regulations issued hereunder, for cause shown.

"(e) DENIAL OF ENTRY.—Except as provided in section 9, the Secretary may, subject to recognized principles of international law, deny entry into the navigable waters of the United States or to any port or place under the jurisdiction of the United States to any vessel not in compliance with the provisions of this Act or the regulations issued hereunder.

"(f) WITHHOLDING OF CLEARANCE.—The Secretary of the Treasury shall withhold or revoke, at the request of the Secretary, the clearance, required by section 4197 of the Revised Statutes of the United States, as amended (46 U. S. C. 91), of any vessel, the owner or operator of which is subject to any of the penalties in this section. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.".

SEC. 3. STUDY OF MONITORING SYSTEMS.

(a) CONTENT.—The Secretary, in consultation with the Secretary of Commerce and other appropriate departments or agencies of the Federal Government, shall study the desirability and feasibility of possible shore-station

systems for monitoring vessels, including fishing vessels, within the Fishery Conservation Zone as defined in section 3(8) of the Fishery Conservation and Management Act of 1976. Each system examined shall be capable of reporting vessel position, identification, course, and speed using either a land, sea, or space monitoring technique.

(b) REPORT.—Within two years after the date of the enactment of this Act, the Secretary shall report his findings to the Congress. This report shall describe the capabilities, limitations, and cost effectiveness of each monitoring system examined from the standpoint of both the Federal Government and any vessel owners who would be affected by the imposition of each approach. The report shall also include the Secretary's recommendations for a single, comprehensive, cost effective shore-station system for monitoring vessels within the Fishery Conservation Zone.

(c) APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for the purposes of this section, not to exceed $500,000 for the fiscal year ending September 30, 1979, and not to exceed $500,000 for the fiscal year ending September 30, 1980.

SEC. 4. IMPROVED PILOTAGE STANDARDS.

Section 4442 of the Revised Statutes of the United States (46 U. S. C. 214) is amended to read as follows:

"SEC. 4442. (a) The Secretary of the department in which the Coast Guard is operating shall, in accordance with subsection (b) of this section, establish eligibility requirements for the issuance of a Federal license to pilot any steam vessel.

"(b) No person may be issued a Federal license to pilot any steam vessel unless he—

"(1) is at least twenty-one years of age;

"(2) is of sound health and has no physical limitations which would hinder or prevent the performance of a pilot's duties;

"(3) agrees to have a thorough physical examination each year while holding such license;

"(4) demonstrates, to the satisfaction of the Secretary, that he possesses the requisite general knowledge and skill to hold such license;

"(5) demonstrates proficiency in the use of electronic aids to navigation;

"(6) maintains adequate knowledge of the waters to be navigated and knowledge of regulations for the prevention of collisions in such waters;

"(7) has sufficient experience, as determined by the Secretary, to evidence his ability to handle any vessel of the type and size which he may be authorized to pilot; and

"(8) meets any other requirement which the Secretary considers reasonable and necessary.

"(c) No Federal license to pilot a steam vessel shall be valid for a term longer than five years. Upon expiration of any such license, the holder may reapply for an additional term and may be reissued a license if he meets the requirements specified under subsection (b) of this section.".

SEC. 5. VESSELS CARRYING CERTAIN CARGOES IN BULK.

Section 4417a of the Revised Statutes of the United States, as amended (46 U. S. C. 391a), is further amended to read as follows:

SEC. 4417a. (1) STATEMENT OF POLICY.—The Congress hereby finds and declares—

"(A) that the carriage by vessels of certain cargoes in bulk or in residue creates substantial hazards to life, property, the navigable waters of the United States (including the quality thereof) and the resources contained therein and to the adjoining land, including but not limited to fish, shellfish, and wildlife, marine and coastal ecosystems, and recreational and scenic values;

"(B) that existing standards for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of all such vessels which use any port or place subject to the jurisdiction of the United States or which operate in the navigable waters of the United States must be more stringent and comprehensive for the mitigation of the hazards to life, property, and the marine environment;

"(C) that existing international standards for inspection and enforcement are incomplete, that those international standards that are in existence are often left unenforced by some flag states, and that there is a need to prevent substandard vessels from using any port or place subject to the jurisdiction of the United States or from operating in the navigable waters of the United States, for the mitigation of the hazards to life, property, or the marine environment;

"(D) that standards developed through regulations shall incorporate the best available technology and shall be required unless clearly shown to create an undue economic impact which is not outweighed by the benefits to navigation and vessel safety or protection of the marine environment;

"(E) that standards developed through regulations shall not impede or interfere with the right of innocent passage or any legitimate use of the high seas in accordance with recognized principles of international law; and

"(F) that the United States should continue to actively support and encourage efforts to obtain international agreements concerning navigation and vessel safety and protection of the marine environment.

"(2) DEFINITIONS.—As used in this section, unless the context otherwise requires—

"(A) 'Discharge' includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

"(B) 'Foreign vessel' means any vessel of foreign registry or operated under the authority of any nation other than the United States.

"(C) 'Hazardous material' means any liquid material or substance which is—

"(i) flammable or combustible; or

"(ii) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act, as amended (33 U. S. C. 1321); or

"(iii) designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 U. S. C. 1803).

"(D) 'Marine environment' means the navigable waters of the United States and the land and resources therein and thereunder; the waters and fishery resources of any area over which the United States

asserts exclusive fishery management authority; the seabed and subsoil of the Outer Continental Shelf of the United States, the resources thereof and the waters superjacent thereto; and the recreational, economic, and scenic values of such waters and resources.

"(E) 'Oil' includes oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"(F) 'Person' means any individual (whether or not a citizen or national of the United States), or any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

"(G) 'Public vessel' means a vessel which—

"(i) is owned, or chartered by demise, and operated by the United States or any foreign government; and

"(ii) is not engaged in commercial service.

"(H) 'Commercial service' means all types of trade or business involving the transportation of goods or persons, excluding the service performed by combatant vessels.

"(I) 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

"(J) 'State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territories of the Pacific Islands, the Com-

monwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

"(K) 'United States', when used in a geographical context, means all the States thereof.

"(L) 'Vessel of the United States' means any vessel documented or numbered under the laws of the United States.

"(M) 'Tanker' means a vessel constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

"(N) 'Crude oil tanker' means a tanker engaged in the trade of carrying crude oil.

"(O) 'Product carrier' means a tanker engaged in the trade of carrying oil, other than crude oil.

"(P) 'Major conversion' means a conversion of an existing vessel which substantially alters the dimensions or carrying capacity of the vessel; or changes the type of vessel; or substantially prolongs its life; or which otherwise so alters the vessel that it is essentially a new vessel, as determined by the Secretary.

"(Q) 'New' means, with respect to various types of vessels subject to subsection (7), a vessel—

"(i) for which the building contract is placed after June 1, 1979; or

"(ii) in the absence of a building contract, the keel of which is laid, or which is at a similar stage of construction after January 1, 1980; or

"(iii) the delivery of which is after June 1, 1982; or

"(iv) which has undergone a major conversion, which is contracted for after June 1, 1979, or construction work of which is begun after January 1, 1980, or completed after June 1, 1982.

"(R) 'Existing' means, with respect to various types of vessels subject to subsection (7), a vessel which is not a new vessel.

"(S) 'Crude oil' means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

"(3) APPLICABILITY.—Except as provided in subsections (4) and (5), this section shall apply to any vessel—

"(A) regardless of tonnage, size, or manner of propulsion;

"(B) whether self-propelled or not;

"(C) whether carrying freight or passengers for hire or not;

"(D) which is a vessel of the United States, or which operates on or enters the navigable waters of the United States, or which transfers oil or hazardous materials in any port or place subject to the jurisdiction of the United States; and

"(E) which carries oil or any hazardous materials in bulk as cargo or in residue.

Any such vessel shall be deemed to be a steam vessel for the purposes of title 52 of the Revised Statutes of the United States and shall be subject to the provisions thereof.

"(4) EXCEPTIONS.—This section shall not apply to—

"(A) any public vessel; or

"(B) any vessel of not more than 500 gross tons, documented in the service of oil exploitation, which is not a tanker and which would be subject to this section only because of the transfer of fuel from fuel supply tanks of such vessels to offshore drilling or production facilities, if the crew member in charge of such transfer is certified as a tankerman: *Provided,* That if the crew member in charge of the transfer of fuel holds a valid license as a master, mate, pilot, engineer or operator, it shall not be necessary for the crew member also to be certificated as a tankerman or have a tankerman endorsement on his license; or

"(C) cannery tenders, fishing tenders, and fishing vessels of not more than 500 gross tons, used in the salmon or crab fisheries of the State of Oregon, Washington, and Alaska, when engaged exclusively in the fishing industry; or

"(D) any foreign vessel, not destined for, or departing from, a port or place subject to the jurisdiction of the United States, that is in innocent passage through the territorial sea of the United States or in transit through the navigable waters of the United States which form a part of an international strait.

"(5) FISH PROCESSING VESSELS.—This section shall not apply to vessels of not more than 5,000 gross tons used in the processing and assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, and such vessels shall be allowed to have on board flammable or combustible liquid cargo in bulk to the extent authorized, and upon such conditions as may be required, by regulations issued by the Secretary.

"(6) REGULATORY AUTHORITY.—

"(A) In accordance with the provisions of section 553 of title 5, United States Code, the Secretary shall issue, and may from time to time amend or repeal, regulations for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, or manning of vessels to which this section applies, as may be necessary for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment. The Secretary may issue differing regulations applicable to vessels engaged in the domestic trade, and may also issue regulations that exceed standards agreed upon internationally. The regulations issued by the Secretary under this subsection shall be in addition to any other regulations, issued under other provisions of law, that may apply to such vessels. The regulations issued by the Secretary under this subsection shall include, but need not be limited to, requirements relating to—

"(i) superstructures, hulls, cargo holds or tanks, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, and boilers;

"(ii) the handling or stowage of cargo, the manner of such handling or stowage of cargo, and the machinery and appliances used in such handling or stowage;

"(iii) equipment and appliances for lifesaving, fire protection, and prevention and mitigation of damage to the marine environment;

"(iv) the manning of such vessels and the duties, qualifications, and training of the officers

and crew thereof, in accordance with subsections (9), (10), and (11);

"(v) improvements in vessel maneuvering and stopping ability and other features which reduce the possibility of collision, grounding, or other accidents;

"(vi) the reduction of cargo loss in the event of a collision, grounding, or other accident; and

"(vii) the reduction or elimination of discharges during ballasting, deballasting, tank cleaning, cargo handling, or other such activity.

"(B) In issuing regulations under paragraph (A), the Secretary shall give due consideration to the kinds and grades of cargo permitted to be on board such vessel.

"(C) The Secretary, in the exercise of this regulatory authority, shall establish procedures for consulting with, and receiving and considering the views of—

"(i) interested Federal departments and agencies,

"(ii) officials of State and local governments,

"(iii) representatives of the maritime community,

"(iv) representatives of port and harbor authorities or associations,

"(v) representatives of environmental groups, and

"(vi) any other interested parties who are knowledgeable or experienced in dealing with

problems involving vessel safety, port and waterways safety, and protection of the marine environment.

"(7) MINIMUM STANDARDS.—In issuing regulations pursuant to subsection (6), the Secretary shall require that any self-propelled vessel shall, as a minimum—

"(A) if a new crude oil tanker of 20,000 deadweight tons or above, be equipped with—

"(i) segregated ballast tanks which are protectively located;

"(ii) a crude oil washing system; and

"(iii) a cargo tank protection system, consisting of a fixed deck froth system and a fixed inert gas system;

"(B) if a new product carrier of 30,000 deadweight tons or above, be equipped with segregated ballast tanks which are protectively located;

"(C) if a new product carrier of 20,000 deadweight tons or above, be equipped with a cargo tank protection system consisting of a fixed deck froth system and a fixed inert gas system or, if such a product carrier carries dedicated products which are incompatible with such a cargo tank protection system, an alternate protection system as authorized by the Secretary;

"(D) if an existing crude oil tanker of 40,000 deadweight tons or above, not later than June 1, 1981, be equipped with—

"(i) segregated ballast tanks; or

"(ii) a crude oil washing system:

Provided, That compliance may be delayed for ves-

sels operating with dedicated clean ballast tanks if of 70,000 deadweight tons or above until June 1, 1983, or until June 1, 1985, for all other such vessels;

"(E) if an existing crude oil tanker of 20,000 deadweight tons or above but less than 40,000 deadweight tons, fifteen years or older, not later than January 1, 1986, or the date on which it reaches fifteen years of age, whichever is later, be equipped with segregated ballast tanks or a crude oil washing system;

"(F) if an existing crude oil tanker of 20,000 deadweight tons or above, not later than June 1, 1983, be equipped with an inert gas system: *Provided,* That for a crude oil tanker of less than 40,000 deadweight tons not fitted with high capacity tank washing machines, the Secretary may grant an exemption if the vessel's owner can clearly show that compliance would be unreasonable and impracticable due to the vessel's design characteristics: *Provided further,* That an existing crude oil tanker of 70,000 deadweight tons or above must be in compliance herewith not later than June 1, 1981;

"(G) if an existing product carrier of 40,000 deadweight tons or above, not later than June 1, 1981, be equipped with segregated ballast tanks or, in lieu thereof, may operate with dedicated clean ballast tanks;

"(H) if an existing product carrier of 20,000 deadweight tons or above but less than 40,000 deadweight tons, fifteen years or older, not later than January 1, 1986, or the date on which it reaches fifteen years of age, whichever is later, be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks;

"(I) if an existing product carrier of 40,000 deadweight tons or above, or an existing product carrier of 20,000 deadweight tons or above but less than 40,000 deadweight tons, which is fitted with high-capacity tank washing machines, not later than June 1, 1983, be equipped with an inert gas system: *Provided,* That an existing product carrier of 70,000 deadweight tons or above must be in compliance herewith not later than June 1, 1981.

"(J) if of 10,000 gross tons or above, not later than June 1, 1979, be equipped with—

"(i) a dual radar system, with short-range and with long-range capabilities and each with true-north features;

"(ii) an electronic relative motion analyzer, which is at least functionally equivalent to such equipment complying with specifications established by the United States Maritime Administration;

"(iii) an electronic position fixing device;

"(iv) adequate communications equipment;

"(v) a sonic depth finder;

"(vi) a gyrocompass; and

"(vii) up-to-date charts:

Provided, That the effective date of compliance with the requirement of clause (ii) shall be July 1, 1982 or such earlier date as agreed to internationally and accepted by the United States;

"(K) if a new tanker of 10,000 gross tons or above, be equipped with—

"(i) two remote steering gear control systems operable separately from the navigating bridge;

"(ii) main steering gear control in the steering gear compartment;

"(iii) means of communications and rudder angle indicators on the navigating bridge, remote steering gear control station, and the steering gear compartment;

"(iv) two or more identical and adequate power units for the main steering gear;

"(v) an alternative and adequate power supply, either from an emergency source of electrical power or from another independent source of power located in the steering gear compartment; and

"(vi) means of automatic starting and stopping of power units with attendant alarms at all steering stations;

"(L) if an existing tanker of 10,000 gross tons or above, not later than June 1, 1981, be equipped with—

"(i) two remote steering gear control systems operable separately from the navigating bridge;

"(ii) main steering gear control in the steering gear compartment; and

"(iii) means of communications and rudder angle indicators on the navigating bridge, remote steering gear control station, and the steering gear compartment; and

"(M) if a crude oil tanker, which is engaged in the transfer of oil from an offshore oil exploitation or production facility on the Outer Continental Shelf of the United States, not later than June 1, 1980, be equipped with segregated ballast tanks, or may operate with dedicated clean ballast tanks or special ballast arrangements: *Provided*, That vessels subject to this paragraph shall comply fully with the other minimum standards of this section, where applicable; and

"(N) in accordance with relevant international agreements to which the United States is a party, exempt vessels from the minimum requirements established in this subsection for segregated ballast, dedicated clean ballast, or crude oil washing if he determines that shore-based reception facilities are a preferred method of handling dirty ballast, and that adequate facilities are readily available.

After the effective date of this Act, the installation of segregated ballast tanks, a crude oil washing system, or an inert gas system, required by regulations issued hereunder, on a vessel which is entitled to engage in coastwise trade in accordance with section 27 of the Merchant Marine Act of 1920 (46 U. S. C. 883) shall be effected within the United States, its territories (not including trust territories), or its possessions, and vessels which fail to comply with this requirement shall thereafter not have the right to engage in the coastwise trade.

"(8) EVIDENCE OF COMPLIANCE.—

"(A) No vessel of the United States to which this section applies shall have on board oil or hazardous materials in bulk as cargo or in residue until it has a Certificate of Inspection, issued under the provisions of title 52 of the Revised Statutes of the

United States, and such certificate has been endorsed to indicate that the vessel is in compliance with the regulations issued under this section. If any such vessel is found not to be in compliance, the Secretary shall notify the owner or agent of the vessel and indicate how the vessel may be brought into compliance.

"(B) No foreign vessel to which this section applies shall operate on or enter the navigable waters of the United States, or transfer oil or hazardous materials in any port or place under the jurisdiction of the United States, unless such vessel has been issued a Certificate of Compliance by the Secretary. The Secretary shall not issue such certificate until the vessel has been examined by the Secretary and found to be in compliance with the provisions of this section and the regulations issued hereunder. If such vessel is found not to be in compliance, the Secretary shall notify the owner or agent of the vessel and indicate how the vessel may be brought into compliance. The Secretary may allow provisional entry for the purposes of conducting examinations.

"(C) The Secretary may accept, in whole or in part, a certificate, endorsement, or document issued by any foreign nation pursuant to any treaty, convention, or other international agreement to which the United States is a party, as a basis for issuance of a Certificate of Compliance.

"(D) No vessel may carry any kind or grade of oil or hazardous materials in bulk as cargo or in residue unless its certificate is endorsed to allow such carriage. No such certificate may allow any vessel to carry any material prohibited by section 4472(3) of the Revised Statutes, as amended (46 U. S. C. 170).

"(E) A certificate issued under this section shall be valid for a period not to exceed twenty-four months and may be renewed as specified by the Secretary. The Secretary may issue a temporary certificate under this section in appropriate circumstances; except that the temporary certificate shall be valid for not more than thirty days. Any certificate shall be revoked or suspended if the Secretary finds that the vessel involved no longer complies with the conditions upon which the certificate was issued.

"(9) PERSONNEL AND MANNING STANDARDS FOR VESSELS OF THE UNITED STATES.—The Secretary shall prescribe standards for the manning of any vessel of the United States subject to the provisions of this section and the duties, qualifications, and training of the officers and crew thereof, including, but not limited to, standards relating to—

"(A) instruction in vessel and cargo handling and vessel navigation under normal operating conditions in coastal and confined waters and on the high seas;

"(B) instruction in vessel and cargo handling and vessel navigation in emergency situations and under accidental or potential accident conditions;

"(C) license qualifications by specific type and size of vessels;

"(D) qualification for licenses by use of simulators for the practice or demonstration of marine-oriented skills;

"(E) minimum health and physical fitness criteria for various grades of licenses and certificates: *Provided,* That the Secretary shall waive the ap-

plicability of such criteria to any individual holding a license or certificate in effect on the effective date of this subsection, including subsequent renewals thereof: *Provided further,* That, when such a waiver is granted, the Secretary may prescribe conditions or limitations to the license or certificate, or the renewal thereof, as he may find reasonable and necessary for the safety of any vessel on which the individual may be employed;

"(F) periodic retraining, and special training for upgrading positions, changing vessel type or size, or assuming new responsibilities; and

"(G) determination of licenses and certificates, conditions of licensing or certification and period of licensing or certification by reference to experience, amount of training completed, and regular performance testing.

"(10) TANKERMAN REQUIREMENTS.—

"(A) Any vessel of the United States having on board oil or hazardous materials in bulk as cargo or in residue shall have a specified number of the crew certificated as tankerman, as may be required by the Secretary, and such requirement shall be so noted on the Certificate of Inspection issued to the vessel.

"(B) Any foreign vessel having on board oil or hazardous materials in bulk as cargo or in residue shall have a special number of personnel certificated as tankerman, or equivalent, as may be required by the Secretary, when the vessel transfers oil or hazardous materials in any port or place subject to the jurisdiction of the United States; and such requirement shall be noted in applicable terminal operating procedures. No transfer operations may take place

unless the crew member in charge is capable of clearly understanding instructions in English.

"(C) The Secretary shall prescribe procedures, standards and qualifications for the issuance of certificates or endorsements as tankerman, stating the kinds of oil or hazardous materials that can be handled with safety to the vessel and the marine environment.

"(D) Certificates or endorsements as tankerman shall be subject to suspension and revocation on the same grounds and in the same manner as provided for under the provisions of section 4450 of the Revised Statutes of the United States, as amended (46 U. S. C. 239).

"(11) PERSONNEL AND MANAGING STANDARDS FOR FOREIGN VESSELS.—The Secretary shall issue regulations and procedures for the verification of manning, training, qualification, and watchkeeping standards promulgated by the certificating state of any foreign vessel which operates on or enters the navigable waters of the United States, and transfers oil or hazardous materials in any port or place under the jurisdiction of the United States. Such regulations and procedures shall include, but need not be limited to, provisions relating to—

"(A) the receipt through the Inter-Governmental Martime Consultative Organization or from the certificating state of the English text of laws, decrees, orders, regulations, specimen licenses and certificates, and other pertinent documents pertaining to manning, training, qualification, and watchkeeping of seafarers;

"(B) the publication and distribution of, or otherwise making available to the public and ap-

propriate enforcement personnel, copies of materials received as provided for in paragraph (A);

"(C) the evaluation, at intervals of not less than five years, of each foreign state's system for licensing and certification of seafarers, including study course content and duration, examination requirements and prerequisites for licensing and certification, and related controls;

"(D) determination, after the evaluation required by clause (C), of whether the foreign state, whose system for licensing and certification of seafarers was evaluated, has standards which are comparable to or more stringent than United States standards or international standards which are accepted by the United States;

"(E) publication in the Federal Register of each determination made pursuant to clause (D), together with a brief explanations of the reasons therefor; and

"(F) manning levels, based on vessel size and type of operation, when operating in the navigable waters of the United States, or in the safety zone in connection with utilization of deepwater ports.

"(12) MODIFICATIONS.—The Secretary may modify any regulation or standard prescribed under this section to conform to the provisions of an international treaty, convention, agreement, or an amendment thereto, which is ratified by the United States.

"(13) PROHIBITED ACTS.—

"(A) It is unlawful for any person—

"(i) to violate any provision of this section or any regulation issued under this section; or

"(ii) to refuse to permit any officer, authorized by the Secretary to enforce the provisions of this section, to board any vessel or to enter any shore area, place, or premises, under such person's control for purposes of inspection under this section; or

"(iii) to refuse to obey any lawful directive issued under this section.

"(B) It is unlawful for any vessel subject to the provision of this section—

"(i) to operate in or on the navigable waters of the United States, or to use any port or place subject to the jurisdiction of the United States, while not in compliance with any provision of this section or any regulation issued hereunder; or

"(ii) to fail to comply with any lawful directive issued pursuant to this section.

"(14) ENFORCEMENT.—

"(A) CIVIL PENALTY.—

"(i) Any person who is found by the Secretary, after notice and an opportunity for a hearing, to have violated this section or a regulation issued hereunder shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the pro-

hibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

"(ii) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

"(iii) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

"(B) CRIMINAL PENALTY.—

"(i) Any person who willfully and knowingly violates this section or any regulation issued hereunder shall be fined not more than $50,000 for each violation or imprisoned for not more than five years, or both.

"(ii) Any person who, in the willful and knowing violation of this section or any regulation issued hereunder, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the provisions of this Act or the regulations issued hereunder, shall, in lieu of the penalties prescribed in subparagraph (i), be fined not more than $100,000, or imprisoned for not more than ten years, or both.

"(C) IN REM LIABILITY.—Any vessel subject to the provisions of this section, which is used in viola-

tion of this section, or any regulation issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to paragraph (A) and may be proceeded against in the United States district court for any district in which such vessel may be found.

"(D) INJUNCTION.—The United States district courts shall have jurisdiction to restrain violations of this section or of regulations issued hereunder, for cause shown.

"(E) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke, at the request of the Secretary, the clearance, required by section 4197 of the Revised Statutes of the United States, as amended (46 U. S. C. 91), of any vessel, the owner or operator of which is subject to any of the penalties in this subsection. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

"(15) INSPECTION.—

"(A) NATIONAL PROGRAM.—

"(i) The Secretary shall establish a national program for inspection of any vessel subject to this section. Each such vessel shall be inspected or examined at least once each year. Any such vessel over ten years of age shall undergo a special and detailed inspection of structural strength and hull integrity, as specified by the Secretary.

"(ii) An inspection or examination may be conducted by any officer authorized by the Secretary. If any such officer is not reasonably available, the Secretary may contract for the conduct of inspections or examinations in the

United States and in foreign countries. Under such contract, an inspector may be authorized to act on behalf of the Secretary, except that no such inspector may issue a Certificate of Inspection or Certificate of Compliance, but may issue a temporary certificate.

"(iii) Notwithstanding the provisions of section 1 of the Act of June 19, 1886, as amended (46 U. S. C. 331), the Secretary shall prescribe by regulation reasonable fees for any inspection or examination conducted pursuant to this section outside the geographical limits of the United States, or which, when involving a foreign vessel, is conducted pursuant to the contract authority provided for in subparagraph (ii) of this paragraph. The owner or operator of any vessel inspected or examined by the Secretary or his designee shall be liable for such fees. Amounts received as fees shall be credited to the General Treasury.

"(B) VESSEL DOCUMENTS.—Any vessel subject to the provisions of this section shall have on board such documents as the Secretary deems necessary for inspection or enforcement under this section, including, but not limited to, documents indicating—

"(i) the kind, grade, and approximate quantities of any cargo on board;

"(ii) the shipper and consignee of the cargo;

"(iii) the points of origin and destination of the vessel; and

"(iv) the name of an agent in the United States authorized to accept legal process.

"(16) MARINE SAFETY INFORMATION SYSTEM.—

"(A) IN GENERAL.—The Secretary shall establish a marine safety information system which shall contain information with regard to any vessel subject to this section which operates on or enters the navigable waters of the United States, or which transfers oil or any hazardous materials in any port or place under the jurisdiction of the United States. In acquiring such information, the Secretary shall make full use of publicly available information. The Secretary may, by regulation, require any such vessel to furnish such data or other information as he deems necessary, in order to carry out the purposes of this subsection, including, but not limited to—

"(i) the names of any person with an ownership interest in such vessel;

"(ii) details of compliance with the financial responsibility requirements of applicable statutes or regulations;

"(iii) registration information, including all changes in the name of the vessel;

"(iv) the history of accidents or serious repair problems of the vessel; and

"(v) a record of all inspections or examinations of a vessel conducted under subsection (15).

"(B) INTERAGENCY COOPERATION.—The head of each department or agency of the Federal Government shall, upon a written request from the Secretary, furnish any available information which the Secretary deems necessary to confirm the information received pursuant to paragraph (A)

"(17) LIGHTERING.—

"(A) IN GENERAL.—After the effective date of regulations issued by the Secretary pursuant to paragraph (B), no vessel may transfer oil or hazardous materials in a port or place subject to the jurisdiction of the United States, if the cargo has been transferred from another vessel in the navigable waters of the United States or in the marine environment unless—

"(i) the transfer was conducted in accordance with regulations issued by the Secretary, and

"(ii) both the delivering and receiving vessels had, on board at the time of transfer, a Certificate of Inspection or a Certificate of Compliance, as would have been required under subsection (8), had the transfer taken place in a port or place subject to the jurisdiction of the United States.

"(B) REGULATIONS.—The Secretary shall issue, and may from time to time, amend or repeal regulations for the transferring of oil or hazardous materials in the navigable waters of the United States or in the marine environment when such oil or hazardous material is destined for a port or place subject to the jurisdiction of the United States. Such regulations shall include, but need not be limited to—

"(i) minimum safe operating conditions, including sea state, wave height, weather, proximity to channels or shipping lanes, and other similar factors;

"(ii) prevention of spills;

"(iii) equipment for responding to any spill;

"(iv) prevention of any unreasonable interference with navigation or other reasonable uses of the high seas, as such uses are defined by treaty, convention, or customary international law;

"(v) establishment of lightering zones; and

"(vi) requirements for communication and prearrival messages.

"(18) TANK WASHINGS.—

"(A) No vessel may transfer a cargo in a port or place subject to the jurisdiction of the United States, if the vessel has arrived after having discharged tank washings containing oil or hazardous materials in violation of any law of the United States or in a manner or quantities inconsistent with the provisions of any treaty to which the United States is a party, in preparation for loading that cargo in any port or place subject to the jurisdiction of the United States.

"(B) The Secretary shall establish effective control and supervisory measures to implement the provisions of this subsection.

"(19) REPORT.—Within six months after the end of each calendar year, the Secretary shall submit to the Congress—

"(A) a report on the administration of this section during the preceding calendar year;

"(B) a summary of inspection and enforcement activities during the preceding calendar year; and

"(C) recommendations to the Congress for any additional legislative authority necessary to improve

navigation and vessel safety and protection of the marine environment.".

SEC. 6. SAVINGS CLAUSE.

(a) Regulations previously issued under statutory provisions which are amended by section 2 of this Act shall continue in effect as though issued under the authority of the Ports and Waterways Safety Act of 1972, as amended by this Act, until expressly abrogated, modified, or amended by the Secretary. Any proceeding under title I of Public Law 92-340 for a violation which occurred before the effective date of this Act may be initiated or continued to conclusion as though such public law had not been amended by this Act.

(b) Regulations previously issued under statutory provisions which are amended by section 5 of this Act shall continue in effect as though issued under the authority of section 4417a of the Revised Statutes of the United States, as amended by this Act, until expressly abrogated, modified, or amended by the Secretary. Any proceeding under the provisions of section 4417a of the Revised Statutes of the United States, as it existed prior to amendment by this Act, for a violation which occurred before the effective date of this Act, may be initiated or continued to conclusion as though such section had not been amended by this Act.

(c) If a provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Approved October 17, 1978.

DISCLOSURE STATEMENT IN COMPLIANCE WITH RULE 28.1 OF THE SUPREME COURT RULES

Bankers Trust New York Corporation is the parent of Bankers Trust Company. Following are the affiliates of Bankers Trust Company:

Bankers Trust Company of Albany, N.A.
    BT Data Corp.
Bankers Trust Company of Hudson Valley, N.A.
Bankers Trust Company of Western New York
Farmers National Bank of Malone
BT Advisors, Inc.
BT Bancshares, Inc.
BT Capital Corporation
BT Credit Co. Inc.
BT Investment Managers, Inc.
BT Leasing Corp.
BT Leasing Services, Inc.
BT Southwest, Inc.
Coleman Factors Corporation (inactive)
Sackman-Gilliland Corporation
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Bankers Trust International (Southwest) Corporation
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Raspail Investors, Inc.
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Realprop Investors Atlantic, Inc.
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Reo Resources Atlantic, Inc.
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Sarel Investors Atlantic, Inc.
Sarel Investors Florida, Inc.
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Vikell Investors, Inc.
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ACM Services, Inc.
Collagen Corporation
Fisher Controls International, Inc.
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R. H. Cole Limited
Companhia Brasileira de Estireno
Companhia Brasileira de Plasticos Monsanto
Daishin Kogyo K.K.
Fisher Controls Limited
Goyana, S.A. Industrias, Brasileiras de Materias Plasticas
Hydrocarbon Products Pty. Ltd.
Industrias Resistol, S.A.
Korag Company Limited
Mitsubishi Monsanto Chemical Company
Monsanto Chemicals of India Limited
Monsanto (Malaysia) Sendirian Berhad
Polyamide Intermediates Limited
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Chas. Kurz & Co., Inc. is the parent of Keystone Shipping Co. Following are the affiliates of Keystone Shipping Co.:

Antietam Tankers, Inc.
Baldbutte Shipping Company
Chestnut Shipping Company
Chilbar Shipping Company
Fredericksburg Shipping Company
Keygaz, Inc.
Margate Shipping Company
Meton Tankers, Inc.
Wilmington Liquid Bulk Terminals, Inc.

There are no subsidiaries of Keystone Shipping Co.

Opposition

1

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ALEXANDER L. STEVAS
CLERK

No. 81-1082

IN THE

Supreme Court of the United States

October Term, 1981

IN THE MATTER OF:
Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the Tank Vessel CORINTHOS, for Exoneration From and Limitation of Liability

BANKERS TRUST COMPANY, MONSANTO COMPANY and KEYSTONE SHIPPING CO.,
Petitioner,

VILLANEUVA COMPANIA NAVIERA, S.A.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR BP OIL, INC. AND SOHIO PETROLEUM COMPANY IN OPPOSITION

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QUESTIONS PRESENTED

1. Should the issue presented by the Petition of Keystone Shipping Co., et al., be fully briefed and argued before the United States Supreme Court, while a parallel issue, the duty of a marine terminal pier to supply inert gas to a discharging oil tanker, remains undecided?

2. Should the United States Supreme Court accept what amounts to a piecemeal appeal, while numerous issues presented by the parties remain undecided by the District Court?

PARTIES

Bankers Trust Company, Monsanto Company and Keystone Shipping Co., as owners, charterers and operators, respectively, of the SS EDGAR M. QUEENY (hereinafter collectively "Keystone"), Petitioners.

Villaneuva Compania Naviera, S.A., owner and operator of the S.T. CORINTHOS (hereinafter "Villaneuva"), Respondents.

BP Oil Inc. as operator/lessee, and Sohio Petroleum Company [1] as owner/lessor of a pier and refinery facility at Marcus Hook, Pennsylvania (hereinafter "BP/SOHIO"), Respondents.[2]

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1. BP Oil, Inc. and Sohio Petroleum Company are wholly owned subsidiaries of the Standard Oil Company (Ohio), a publicly owned company. On December 23, 1977, the name of the Sohio Petroleum Company was changed to Sohio Natural Resources Company, which, in turn, was renamed Sohio Alaska Petroleum Company on December 31, 1979. In excess of 50% of the common stock of the Standard Oil Company (Ohio) is owned by British Petroleum (Overzee) B.V., a Dutch company which is a 100% owned subsidiary of British Petroleum B.V., a Dutch company, which in turn is a 100% owned subsidiary of BP Trading, Ltd., a British corporation, which is a 100% owned subsidiary of the British Petroleum Company, Ltd., a publicly owned British company.

2. Pursuant to Rule 19.6 of The Supreme Court Rules, BP/SOHIO hereby notify the Supreme Court of their continued interest in Keystone's Petition. BP/SOHIO's interest is twofold: (1) as a participant in the liability trial out of which this petition arises, and (2) as a claimant in the Villaneuva limitation proceeding. In the second role, BP/SOHIO notes that it has not taken a position adverse to that of Villaneuva, believing the claims raised against Villaneuva to be spurious.

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OPINIONS BELOW

The Opinion of the United States District Court for the Eastern District of Pennsylvania is reported as: *Complaint of Bankers Trust Co.*, 503 F. Supp. 337 (E. D. Pa. 1980) and is found at A37 in the Petition of Keystone, (No. 81-1082).

The Opinion of the United States Court of Appeals for the Third Circuit is reported as: *Complaint of Bankers Trust Co.*, 651 F. 2d 160 (3d Cir. 1981), and is found at A1 in No. 81-1082.

JURISDICTION

Respondents acknowledge and accept the statement of jurisdiction presented by petitioners, Keystone, at page 1 of No. 81-1082.

STATUTES

The Port and Tanker Safety Act of 1978:

33 U. S. C. §§ 1221-1232,
46 U. S. C. §§ 214, 391a

The text of the above statute appears at A108 of the Keystone petition (No. 81-1082).

The Limitation of Liability Act:

46 U. S. C. § 183 et seq.

The text of the above statute appears in the Appendix hereto at A1.

STATEMENT OF THE CASE

Original federal jurisdiction of this matter arises under 28 U. S. C. § 1333(1).

This admiralty action arose out of a tragic accident in which the chemical tanker S.S. EDGAR M. QUEENY struck the crude oil tanker S.S. CORINTHOS, which was moored to and discharging her cargo at a terminal of BP/SOHIO. The CORINTHOS exploded and burned, killing twenty-six persons, injuring others, and causing extensive damage to the BP/SOHIO terminal and other nearby property.

Shortly after the collision, Keystone filed a petition for exoneration from or limitation of liability, pursuant to the Limitation of Liability Act, 46 U. S. C. § 183 et seq. The District Court bifurcated the action with separate trials on the limitation of liability and damage issues. This appeal is taken from the decision of the Court of Appeals for the Third Circuit on the liability aspects of the case.[3]

Following the limitation trial, the District Court filed its Opinion in which it ruled that Keystone were not entitled to limit their liability because shore management was aware, or should have been aware, of the damaged condition of the QUEENY's astern turbine, which resulted in reduced backing power. This damage was a contributing cause of the collision. The turbine damage was caused by a defectively designed astern guardian valve, located upstream from the turbine. The valve deteriorated and generated loose metal particles, which in turn impinged on and damaged the turbine blading.

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3. The damage issues have also been heard and appealed to the Third Circuit and, since petitions have been filed by Keystone and Villaneuva for an extension of the time within which petitions for certiorari may be filed, it is expected that these parties may seek to file petitions for certiorari from the Third Circuit's decisions on damages.

The District Court also found that BP/SOHIO and Villaneuva were negligent under common law standards; BP/SOHIO for failing to provide inert gas to the CORINTHOS during the vessel's discharging operation and Villaneuva for failing to provide an inerted vessel. However, it held that it was preempted by the provisions of the Port and Tanker Safety Act of 1978, 33 U. S. C. §§ 1221-1232; 46 U. S. C. § 214, 391a, from imposing liability.

Keystone appealed the denial of their limitation of liability and the finding that the Port and Tanker Safety Act preempted the District Court from imposing liability upon BP/SOHIO and Villaneuva. BP/SOHIO and Villaneuva cross-appealed the finding of negligence.

The Court of Appeals reversed the District Court's decision on the right of Keystone to limit their liability and refused to consider either Keystone's appeal on preemption as to BP/SOHIO or BP/SOHIO's appeal on negligence. The sole grounds for this refusal was that the District Court had failed to enter a separate Order as to the liability of BP/SOHIO. As to Villaneuva, the Court of Appeals reversed the District Court's application of the preemption doctrine and held the CORINTHOS seaworthy. The Court of Appeals remanded the case to the District Court for proceedings consistent with its opinion.

Petitions for rehearing were filed by all parties and were denied. BP/SOHIO then filed a motion for clarification of what was meant by "proceedings consistent with" the appellate opinion. This motion was denied.

BP/SOHIO filed a Petition for Certiorari to this Court, alleging that the Court of Appeals erred in reversing the ruling of the District Court and in failing to consider preemption or the negligence issue as to BP/SOHIO. Keystone filed a Petition for Certiorari, alleging that the Court of Appeals erred in not holding Villaneuva liable for failing to provide an inerted vessel and thereby allowing Villaneuva to limit its liability. This brief in opposition to the Petition of Keystone follows.

SUMMARY OF ARGUMENT

To date, this case has spawned three petitions for certiorari; one by each of the principal parties to the original liability trial. However, while various issues may be individually ripe for Supreme Court review, the liability case, as a whole, is not.

If this case is to be briefed and argued before the Supreme Court, then the issues raised by BP/SOHIO in their petition (No. 81-1054) should be heard. However, in view of the number of issues left unresolved, this case, as a whole, should be returned to the Court of Appeals and the District Court for further action, in order that all issues raised by the parties in their respective petitions for certiorari be considered in perspective.

There are two aspects of the liability phase of this case which remain undecided. First, the Court of Appeals declined to hear BP/SOHIO's cross appeal and the Keystone appeal regarding the liability of BP/SOHIO because the trial judge did not see fit to incorporate his findings into a separate order. The main issue in these appeals, whether a marine petroleum terminal has the duty to provide inert gas to tank vessels which dock to discharge crude oil, is directly related and parallel to the inerting issues raised in the Keystone petition. Therefore, the BP/SOHIO appeal to the Court of Appeals should be decided before the entire inerting issue is briefed and argued before the Supreme Court.

Secondly, the District Court did not decide several issues, principally on the ground that a decision on these issues was unnecessary because of the denial of limitation to Keystone based on privity and knowledge of the machinery failure. In light of the Court of Appeal's reversal, a decision on the other, undecided issues is material and necessary, prior to Supreme Court review.

A further loose end is represented by the Court of Appeal's treatment of certain evidence regarding vessel records. The Court of Appeals concluded that, because certain RPM tapes were not themselves in evidence, the District Court erred in relying upon evidence of the information the tapes contained. While there was evidence in the record of what these RPM tapes would show, if the outcome of the case is to depend upon the introduction of those tapes, as the Court of Appeals has indicated, then the case should be remanded to the District Court for the taking of further evidence and the admission of the RPM recorder tapes.

ARGUMENT

This case is not ripe for Supreme Court review. If certiorari is to be granted, it should be granted simply for the purpose of remanding this case to the Court of Appeals, with instructions to decide the BP/SOHIO appeals and to remand the remainder of the case to the District Court for decisions on issues not yet decided, together with the clarification of certain evidentiary questions. It would be a gross misallocation of judicial resources to brief and argue the issue of Villaneuva's exoneration before the Supreme Court without first having final decisions on all liability issues at the trial and appellate court levels. *Brotherhood of Locomotive Firemen and Enginemen v. Bangor & Aroostook R.C.*, 389 U. S. 327 (1967).

I. The Issue Presented by the Petition of Keystone Should Not Be Briefed and Argued Before the United States Supreme Court While a Parallel Issue Remains Undecided.

In addition to the issues relating to the right of Villaneuva to exoneration from liability, the trial before the District Court involved the right of the Keystone interests to limitation of liability and the possible liability of BP/SOHIO. The District Court held that Keystone were not entitled to limitation, that Villaneuva was entitled to exoneration, and that BP/SOHIO were not liable for the explosion which followed the collision. In essence, the District Court tried and decided the liability of all three parties.

The District Court's holdings with respect to Villaneuva and BP/SOHIO centered on the duty to ensure that the CORINTHOS was supplied with inert gas. The court found both BP/SOHIO and Villaneuva negligent at common law, but concluded that the enactment of the Port and Tanker Safety Act of 1978, which set a schedule for the inerting of tank vessels like the CORINTHOS, pre-

empted it from holding either Villaneuva or BP/SOHIO liable for the noninerted status of the CORINTHOS.

Keystone appealed this holding and BP/SOHIO and Villaneuva both filed protective cross-appeals contesting the finding of common-law negligence. The Court of Appeals, for reasons which form the subject of BP/SOHIO's own Petition for Certiorari (81-1054), dismissed BP/SOHIO's cross appeal (and, *sub silentio*, that portion of Keystone's appeal which involved the duty of BP/SOHIO to inert the CORINTHOS).

However, the Third Circuit did decide the parallel issue, the duty of the CORINTHOS to inert herself. The Court of Appeal's opinion, which rejected the District Court's rationale, used different language to arrive at essentially the same result. It held that the purpose of the Port and Tanker Safety Act of 1978 was to phase in, with minimum disruption, the installation of inert gas systems and, further, that a vessel in compliance with that statutory schedule could not be held unseaworthy for failing to install an inert gas system ahead of schedule.

It is to this holding to which Keystone's Petition is addressed; it is the failure of the Court of Appeals to consider the parallel issue of BP/SOHIO liability which grounds this opposition to the Keystone Petition. The District Court treated both BP/SOHIO and Villaneuva in like fashion, finding both negligent at common law, but finding that the 1978 Act precluded a finding of liability. However, since the Court of Appeals erroneously ruled that it had no jurisdiction over the BP/SOHIO appeals, the inerting issue, as it affects the case as a whole, has not been fully addressed. It is, therefore, not ripe for review by this Court. Only half of the issue has been the subject of appellate review.

As it now stands, the Court of Appeals has held that a vessel need not be equipped to accept inert gas as long as

it is in compliance with the Congressional schedule; but the Court has left open the possibility (unlikely as it seems) that a pier owner/operator could be held liable for failing to supply inert gas to that same vessel, despite the lack of facilities on board the ship to receive inert gas. It would be inappropriate for the Supreme Court to hear argument on one half of this issue while the other half awaits review in the courts below.

II. The United States Supreme Court Should Not Fully Review This Case, But Should Remand It to the District Court to Allow That Court to Decide the Numerous Material Points Left Undecided and to Clarify the Status of Important Evidence.

While the issues in the CORINTHOS' limitation case are distinct from those in the QUEENY's petition, both issues, as well as the liability of BP/SOHIO, were tried before the District Court at the same time. If certiorari is to be granted, then it should be granted to examine the entire liability case, instead of only a portion thereof.

An examination of the case as a whole reveals that numerous areas have yet to be ruled on. Both BP/SOHIO and Villaneuva put on evidence of various failures of the Keystone shoreside management to monitor and ensure the seaworthiness of the QUEENY. The evidence covered the following failures of Keystone's shoreside management:

1. Failure to ensure that the QUEENY's officers were aware of the full capabilities of the vessel's bow thruster;

2. Failure to instruct the QUEENY's officers on the proper use of tugs while maneuvering;

3. Failure to issue instructions to insure that the QUEENY would maintain an adequate anchor detail;

4. Failure to authorize the QUEENY to use the faster bridge control of the engines, despite greater expense;

5. Failure to issue special instructions concerning the QUEENY's excessive turning circle;

6. Failure to set up an adequate machinery maintenance program.

The district judge was aware of these items, but did not rule on them, noting that it was unnecessary in light of his findings that other failures of Keystone management, involving the defective astern machinery, were sufficient to deny limitation.[4]

The Court of Appeals also acknowledged these points, but did not comment on them. Without a clear remand to the District Court, these important issues will slip into judicial limbo.

There is another loose end which is even more troublesome. The Court of Appeals held that the District Court could not rely upon the content of certain engine RPM recorder tapes, since these tapes were not in evidence.[5] The Court of Appeals went on to state that had

4. BP/SOHIO also argued that Bankers Trust Co. and Monsanto Company should be precluded from individually limiting their liability, since neither party specifically put on evidence of their lack of knowledge or privity of the QUEENY's unseaworthiness. *In Re Long*, 293 F. Supp. 172 (S. D. N. Y. 1968) aff'd 439 F. 2d 109 (2d Cir. 1971). There was no ruling on this contention by either the trial or appellate court.

5. Two rolls of these tapes are unquestionably in evidence: the sea trial tape and the tape from the night of the collision. The remainder of the tapes were not admitted into evidence. However, a summary of the tapes was prepared by Dr. Corlett, an expert who testified on behalf of BP/SOHIO and Villaneuva. In addition, several witnesses testified regarding the existence of the intervening tapes, while other witnesses testified that the astern

the tapes been admitted they would not be probative. Since one of the reasons urged for denying limitation to the Keystone interests was the failure to review the RPM tapes, and a review of the tapes would have shown the shortfall in astern power (a sign of the vessel's defective turbine, which in turn was held to be a cause of the collision), it is difficult to comprehend the statement that the tapes had no probative value. It is even more difficult to comprehend the basis upon which the Court of Appeals could comment upon the probative value of evidence that was not even before it.

It was improper for the Court of Appeals to consider this evidentiary confusion as a basis for its reversal of the denial of limitation to Keystone. There was ample evidence of what the tapes would have shown, had they been examined by Keystone. However, if the determination of limitation is to be based in any degree upon what the tapes did or did not reveal, it should be based upon an educated examination of those tapes, or perhaps a summary of the relevant portions of those tapes; not on an unfounded assumption that the tapes have "minimum probative value, if any". (A-23).

Therefore, if this case is to be decided upon a reasoned consideration of all the evidence, then it should be remanded with instructions to the District Court to rule upon those issues not yet decided and upon the evidentiary status of the RPM recorder tapes. To do otherwise, given the present posture of this case, would be a waste of time, effort, and of judicial effectiveness.

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5. (Cont'd)

turbine was damaged early in the life of the ship. The District Court may have inferred that this damage would have shown up on the RPM tapes; that, had Keystone management looked at these tapes, it should have discovered the turbine damage prior to the collision.

CONCLUSION

This case is not ripe for full review by the United States Supreme Court at this time. Therefore, BP/SOHIO respectfully request that the Petition for Certiorari on behalf of Keystone et al. be denied. In the alternative, if certiorari is granted, BP/SOHIO request that it be granted solely for the purpose of establishing the propriety of remanding the entire matter to the Court of Appeals for the Third Circuit with instructions to have the outstanding issues decided, either by the Court of Appeals or the District Court, as appropriate.

Respectfully submitted,

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Appendix.

STATUTES INVOLVED

Limitation of Liability Act, 46 U. S. C. § 183

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§ 183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: *Provided,* That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, non-descript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title. R. S. § 4283; Aug. 29, 1935, c. 804, § 1, 49 Stat. 960; June 5, 1936, c. 521, § 1, 49 Stat. 1479.

Opposition

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No. 81-1082

IN THE

Supreme Court of the United States

October Term, 1981

IN THE MATTER OF:
Complaint of VILLANEUVA COMPANIA NAVIERA, S.A., Owner of the Tank Vessel CORINTHOS, for Exoneration From and Limitation of Liability

BANKERS TRUST COMPANY, MONSANTO COMPANY and KEYSTONE SHIPPING CO.,
Petitioner,

VILLANEUVA COMPANIA NAVIERA, S.A.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF VILLANEUVA COMPANIA NAVIERA, S.A., IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI OF BANKERS TRUST COMPANY, ET AL.

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RESPONDENT'S COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Were the Court of Appeals and the District Court clearly correct in concluding that they should be guided by the federal statutory law mandating the time and manner of retrofitting tank vessels with an inert gas system, when Congress by the Port and Tanker Safety Act of 1978 expressly legislated a definite time-table for existing vessels of the size of the CORINTHOS to be equipped with such a system by June 1, 1983?

2. Was the Court of Appeals clearly correct when it reversed the District Court and decided after a careful review of current U. S. legislation, regulations and applicable International treaties, as well as the American Bureau of Shipping classification society requirements that the CORINTHOS was properly equipped with the required fire fighting and anti-explosion equipment on January 31, 1975 and was therefore seaworthy when she was struck by the EDGAR M. QUEENY?

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COUNTER-STATEMENT OF THE CASE

Petitioners Bankers Trust Co., *et al.*, ask this Court to review the applicability of a federal statute governing the inerting of crude oil tank vessels prescribed in The Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, 92 Stat. 1471 (codified at 33 U. S. C. §§ 1221-1232; 46 U. S. C. §§ 214, 391a) A92-153. The inerting issue has been correctly decided in this very case by both the Court of Appeals and the District Court and needs no further attention.

Under existing United States and International fire fighting and anti-explosion regulations, applicable statutes, and treaties, the CORINTHOS (a) was not obligated to be inerted before June 1, 1983, and (b) was in full compliance with all existing U. S. laws and treaties, having been inspected the day before the collision and given a seaworthy certificate on January 30, 1975 by the American Bureau of Shipping, a classification society authorized by Congress (46 U. S. C. § 881).

The Court of Appeals correctly held, reversing the District Court, that the CORINTHOS was seaworthy.

Contrary to the assertion of petitioners on page 4 of their Petition, the District Court did not find the CORINTHOS to have been *negligent* for not being fitted with an inert gas system, but actually (and incorrectly) held that she was unseaworthy:

> "In the absence of recently enacted legislation which sets forth the time frame for the retrofitting of varying size crude carriers with an inert gas system, we would hold that the Corinthos was *unseaworthy* at the time of the collision. *See,* The Port and Tanker Safety Act of 1978, Pub. L. No. 95-474, 92 Stat. 1471 (codified at 33 U. S. C. §§ 1221-1232; 46 U. S. C. §§ 214, 391a)." (Emphasis added)
>
> A-61 of Petition of Bankers Trust Company, *et al.* for Certiorari.

The distinction is important in light of the specific finding of the Court of Appeals that:

> ". . . [O]n January 31, 1975, the day of the collision, the CORINTHOS was in compliance with the existing international treaties, and the United States legislative and regulatory requirements concerned with firefighting and explosions. It complied with all the fire fighting and anti-explosion provisions of the Safety of Life at Sea (SOLAS) Conventions of 1948 and 1960.[1] Furthermore, in accordance with the SOLAS requirements, her owners had ensured not only that the vessel was equipped for fire fighting, but also that her crew was properly trained to fight fires. Finally, the CORINTHOS was also recognized by the American Bureau of Shipping (ABS)[2] to be seaworthy. *Thus, we find it was clearly erroneous for the lower court to rule that the CORINTHOS was unseaworthy.*" (Emphasis added, footnotes renumbered) A-30 to A-31 of Petition of Bankers Trust Company, *et al.* for Certiorari.

The issue in the District Court was not whether the CORINTHOS interests were negligent. The ultimate question for decision was whether or not the CORINTHOS was obligated to be equipped with an inert gas system, as determined by the applicable federal statute. If the statute did not obligate her to be so equipped, was she nevertheless unseaworthy, notwithstanding that she fully complied with all applicable Unied States statutes, regulations,

1. *See* Safety of Life at Sea Convention, June 10, 1948, 3 U. S. T. 3450, T. I. A. S. No. 2495; and Safety of Life at Sea Convention, June 17, 1977, 16 U. S. T. 185, T. I. A. S. No. 5780.

2. The ABS is recognized by the United States Government as a governmental agency authorized to inspect and classify tank vessels. 46 U. S. C. § 881.

international conventions and treaties relating to construction, operation, fire fighting and anti-explosion equpiment.

The Court of Appeals correctly concluded that the CORINTHOS was seaworthy on the night of the collision because of her compliance with all applicable United States statutes and regulations, as well as all applicable treaties, none of which required the vessel to be fitted with an inert gas system on the day of the collision. Indeed, Congress expressly legislated in the Port and Tanker Safety Act of 1978, *supra*, which provides specifically at 46 U. S. C. § 391(a)(7)(f), that existing vessels of the size of CORINTHOS need not be fitted with such a system until June 1, 1983. *Supra*, p. 1.

SUMMARY OF ARGUMENT

Villaneuva Compania Naviera, S.A.,[3] as owner of the CORINTHOS, contends that there was no obligation to install equipment for an inert gas system on the CORINTHOS until June 1, 1983 because Congress in 1978 passed a statute prescribing the time-table for inerting existing tankers of the size and type of the CORINTHOS by June 1, 1983. Moreover, both Courts below correctly accepted the foregoing Congressional mandate, the Circuit Court holding that it should be guided by the statute and its legislative history.

Apart from the inerting issue, the CORINTHOS was held seaworthy by the Court of Appeals, reversing the District Court, on the ground that the vessel fully complied with all U. S. Coast Guard regulations, U. S. Statutes and the Safety of Life at Sea Conventions of 1948 and 1960 for fire fighting and anti-explosion equipment.

For the foregoing reasons, the Bankers Trust Petition for Certiorari on behalf of the EDGAR M. QUEENY should be denied.

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3. Villaneuva Compania Naviera, S.A. although organized as a corporation is not a subsidiary or affiliate of any publicly owned corporation.

ARGUMENT

I. The Court of Appeals' Decision to Be Guided by the Time-Table of The Port and Tanker Safety Act of 1978 for Inerting Crude Oil Carriers Such as CORINTHOS Does Not Conflict With This Court's Holding in *City of Milwaukee v. Illinois and Michigan, infra,* on Which Petitioner Relies.

Counsel for petitioners, on page 6 of their Petition, contend that the analysis of the Court of Appeals on the inerting aspects of this matter is contrary to this Court's mandate in *City of Milwaukee v. Illinois and Michigan,* — U. S. —, 101 S. Ct. 1784 (1981). Petitioners' contention is unsupportable on the opinion of the Third Circuit and the record below.

The Court of Appeals carefully considered the legislative history of the Port and Tanker Safety Act of 1978, which showed a balanced and comprehensive legislative discussion and analysis of the problems of tanker safety by both houses of Congress. The District Court and the Circuit Court both correctly concluded that the time-table determined by Congress for retrofitting existing crude oil carriers with inert gas systems should not be judicially disturbed. (A-31 and A-62)

The analysis of the Appellate Court should not be characterized as an "automatic displacement" of federal common law, as argued by Petitioners on pp. 7-8, *et seq.* of their Petition. On the contrary, the Court of Appeals correctly analyzed in detail the legislative history behind the Act. This legislative history evidenced the clear intent of Congress, determined after extensive consideration of the many conflicting maritime interests, both national and international, to establish an orderly and realistic time-table for inerting new vessels and the retrofitting of existing crude oil carriers with inert gas systems.

The legislative history confirms that Congress gave due consideration to the world-wide capacity of shipyards and manufacturers of component parts to realistically achieve as soon as practically possible the installation of inert gas systems on crude oil carriers. The Congress also considered the necessity to maintain the uninterrupted supply of crude oil to this country and, in the interest of the uniformity of maritime law, to maintain the schedule and requirements for inerting established by the Intergovernmental Maritime Consultative Organization (IMCO). *See,* Convention on the Intergovernmental Maritime Consultative Organization (IMCO), March 6, 1948, 9 U. S. T. 621, T. I. A. S. No. 4044, 289 U. N. T. S. 48 (amended 1964, 1965, 1974). The Senate Committee Report demonstrated an acute awareness of the advantages of multilateral action with respect to comprehensive standards for the design, construction, maintenance and operation of tankers for the protection of the marine environment. 651 F. 2d 174. *See,* Senate Report, No. 724, 92d Cong. 2d Sess. 426, *reprinted in* [1972] U. S. Code Cong. & Ad. News 2766, 2783.

Under the standards of analysis laid down by this Court in *City of Milwaukee, supra,* the Court need not find an explicit legislative intent expressly specifying that the federal statute is to supplant federal common law. Evidence of such a clear and manifest purpose is required under *City of Milwaukee, supra,* only where the issue is whether *state* or *federal law* takes precedence. Where the issue, as here, is whether a federal statute or federal common law is to take precedence, this Court stated in *City of Milwaukee, supra*:

> " '[W]e start with the assumption' that it is for Congress, not federal courts, to articulate the appropriate standards to be applied as a matter of federal law." (p. 1792)

It is clear, that once Congress has spoken in a carefully considered and comprehensive manner, federal common law is no longer an applicable guideline. As this Court noted in the *City of Milwaukee, supra*:

> "We have always recognized that federal common law is 'subject to the paramount authority of Congress.' *New Jersey v. New York*, 283 U. S. 336, 348, 51 S. Ct. 478, 481, 75 L. Ed. 1104 (1931). It is resorted to '[i]n the absence of an applicable Act of Congress,' *Clearfield Trust*, 318 U. S., at 367, 63 S. Ct., at 575, * * * [W]hen Congress addresses a question previously governed by a decision rested on federal common law the need for such an unusual exercise of lawmaking by federal courts disappears. This was pointedly recognized in *Illinois v. Milwaukee*, itself, 406 U. S., at 107, 92 S. Ct., at 1394 ('new federal laws and new federal regulations may in time pre-empt the field of federal common law of nuisance'), and in the lower court decision extensively relied upon in that case, *Texas v. Pankey*, 441 F. 2d 236, 241 (CA 10 1971) (federal common law applies '[u]ntil the field has been made the subject of comprehensive legislation or authorized administrative standards') (quoted in *Illinois v. Milwaukee, supra*, at 107, n. 9, 92 S. Ct., at 1395, n. 9)." (pp. 1790-1791)

The foregoing policy has been followed by this Court in its recognition of the need to insure the separation of powers which is fundamental and necessary to our form of government.

Petitioners Bankers Trust, *et al.*, contend on page 13 that *Tennessee Valley Authority v. Hill*, 437 U. S. 153 (1978) stands for the following proposition:

> "In every instance of Congressional displacement of federal common law and in every instance of invoca-

> tion of federal common law, federal courts have discerned Congress' intent with regard the viability of federal common law." (Bankers Trust Petition, p. 13)

The *Hill* case offers no such support for the asserted proposition of "federal displacement" of common law. No issue of "displacement" appears in the Opinion of the *Hill* case. The only issue before this Court in the *Hill* case was the construction of a statute, the Endangered Species Act of 1973, 87 Stat. 884, 16 U. S. C. § 1531, *et seq.* (1976 ed.). In its opinion, this Court reviewed the legislative history to determine the intent of Congress, but the guidelines of this Court are explicit:

> "When confronted with a statute which is plain and unambiguous on its face, we ordinarily do not look to legislative history as a guide to its meaning. *Ex parte Collett* 337 U. S. 55, 61 (1949), and cases cited therein. Here it is not *necessary* to look beyond the words of the statute. We have undertaken such an analysis only to meet Mr. Justice POWELL'S suggestion that the 'absurd' result reached in this case, *post* at 196, is not in accord with Congressional intent." (p. 184, fn. 29)

This Court analyzed its duties and responsibilities as follows:

> ". . . Our system of government is, after all, a tripartite one, with each branch having certain defined functions delegated to it by the Constitution. While '[i]t is emphatically the province and duty of the judicial department to say what the law is,' *Marbury v. Madison,* 1 Cranch, 137, 177, 2 L. Ed. 60 (1803), it is equally—and emphatically—the exclusive province of the Congress not only to formulate legislative policies and mandate programs and projects, but also to

establish their relative priority for the Nation. Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought.

• • •

Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not sit as a committee of review, nor are we vested with the power of veto.

• • •

We agree with the Court of Appeals that in our constitutional system the commitment to the separation of powers is too fundamental for us to pre-empt congressional action by judicially decreeing what accords with 'common sense and the public weal.' Our Constitution vests such responsibilities in the political branches." (pp. 194, 195)

Thus, the opinion of the court in *Tennessee Valley Authority, supra,* had nothing whatsoever to do with the question of "displacement" of federal common law by federal statutory law. On the contrary, the *Hill* case appears to be support for the proposition that when Congress has enacted legislation which is unambiguous and constitutional, the statute will not be subject to "review" and "veto" by the court.

Mobil Oil Corporation v. Higginbotham, 436 U. S. 618 (1978) actually considered the issue of the "displacement" of federal common law by federal statute in an

admiralty context. However, contrary to petitioner's assertion on page 14 of its petition, the *Higginbotham* case provides no support for the petitioner's contention that the courts must protect the viability of federal common law by first examining congressional intent to ascertain if the Congress specifically recited that it was displacing federal common law. The Court merely held:

> "There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted. In the area covered by the statute, it would be no more appropriate to prescribe a different measure of damages than to prescribe a different statute of limitations, or a different class of beneficiaries." (p. 625)

This Court in the *Higginbotham* case concluded that it had no authority to substitute its views for those expressed by Congress in a duly enacted statute.

Any judicial change in the Congressional time-table for inerting existing crude oil carriers, including the CORINTHOS, would nullify the specific inerting schedule enacted by Congress.

Similarly, there was no displacement issue before the Court in *Illinois v. City of Milwaukee*, 406 U. S. 91 (1972) which preceded the *City of Milwaukee v. Illinois and Michigan*, 101 S. Ct. 1784 (1981). In 1972 when *Illinois v. City of Milwaukee*, 406 U. S. 91, was before this Court, Congress had not yet enacted the Federal Water Pollution Act Amendments of 1972. In these circumstances, it is not a displacement case since there was no controlling federal statute dealing directly with questions of water quality. In 1972 this Court noted that new federal laws and federal regulations may in time pre-empt the field occupied by the federal common law.

In *City of Milwaukee v. Illinois*, 101 S. Ct. 1784 (1981), this Court considered the action of Congress when it amended the Federal Water Pollution Control Act in 1972 (Pub. L. 92-500, 86 Stat. 816). This Court held:

> "We conclude that, at least so far as concerns the claims of respondents, Congress has not left the formulation of appropriate federal standards to the courts through application of often vague and indeterminate nuisance concepts and maxims of equity jurisprudence, but rather has occupied the field through the establishment of a comprehensive regulatory program supervised by an expert administrative agency. (p. 1792)

The Third Circuit's analysis in the instant case of the legislative history of the Port and Tanker Safety Act reveals its understanding that Congress intended to establish a comprehensive regulatory program administered by the U. S. Coast Guard. Since the Third Circuit in the instant case actually reviewed the legislative history to ascertain the intent by Congress, the analysis of the appeals panel should not be characterized as "automatic displacement."

In *City of Milwaukee, supra*, this Court correctly ruled:

> "[T]he question whether a previously available federal common-law action has been displaced by federal statutory law involves an assessment of the scope of the legislation and whether the scheme established by Congress addresses the problem formerly governed by federal common law. Our 'detailed review of respondents' claims,' *post*, at 1808, is such an assessment and not, as the dissent suggests, a consideration of whether the particular common law applied below was reasonable" (footnote 8, p. 1791.)

The review of the legislative history of The Port and Tanker Safety Act by the Third Circuit reveals congressional consideration and concern, on the one hand, with balancing the possible safety benefits to be gained from immediately requiring all crude carriers to be inerted, with the great disruptions, on the other hand, that such a requirement (without any scheduling) would impose on the industry and on the uninterrupted supply of crude oil to this country.

The Congress specifically considered and rejected a requirement that all existing crude oil carriers be immediately retrofitted partly because of the anticipated inability of worldwide shipyards to effect instant compliance. Vol. 123, Cong. Record, p. 16524. The intent of the Congressional committees drafting the bill was to strike a balance between the uniformity of international scheduling and standards developed by the Intergovernmental Maritime Consultative Organization (IMCO), with the President's suggestion in March of 1977 that inert gas equipment standards be effective within five years. Vol. 123, Cong. Record, March 17, 1977, p. 7931 (1977).

The legislative mandate resulted from the Congressional consideration of these many factors. Congress was striking a balance to establish a comprehensive time frame for the retrofitting of crude oil carriers of varying size, extending over a period of years for effective completion by specific dates.

According to the rules established by Congress, crude oil carriers of the size of the CORINTHOS need not be retrofitted with an inert gas system prior to June 1, 1983.

Petitioners at pp. 11-12 erroneously contend that the Court of Appeals holding amounted to "de facto preemption", implying that the Court did not consider the legislative history.

This argument is incorrect. That part of the holding from the appeals Court's decision quoted at pp. 11-12 establishes just the contrary; the panel's holding relies on several of the considerations discussed in the committee hearings prior to enacting the statute. In any event, whatever meaning is implied in the term "de facto preemption", the Court's reasoning process was neither grounded on "automatic displacement" nor "de facto preemption".

Petitioners have thus misread the Opinion of the Third Circuit when they state at the top of page 11:

> "It completely ignored the general maritime laws applied by the district court *and avoided any examination of Congress' intent with respect to that law.*" (p. 11) (emphasis added)

Petitioner further argues at pp. 15-19 that, even if this statute applies to the CORINTHOS to prescribe her inerting equipment, the statute fails to provide for private rights in tort for failure of the tanker to be equipped with an inert gas system. Petitioner thus fails to recognize that the statute could not be more explicit in specifying when vessels of the size and type of the CORINTHOS must be equipped with such a system.

The Court of Appeals and the District Court were correct in concluding that this statute governs the time for the inerting of tank vessels of the size and type of the CORINTHOS. Once this proposition is established, there can be no breach for failure to inert nor can there be any private right addessing such asserted breach based on the alleged failure of the vessel to be equipped with an inert gas system, so long as a vessel owner complies with the specific time requirement for the installation of such a system.

The Third Circuit Court of Appeals in the instant case held:

> "We hold, therefore, that in precluding itself from considering the legislation in question in this case, the court below was in error." [4] (A-28, A-29)

The Court of Appeals was not preempted from considering the statute or the legislative history. On the contrary, after noting that Congress had determined and considered many factors, including shipyard capacity and technology, the Court of Appeals correctly concluded that rather than be preempted by the statute, it would "be guided by the federal legislation developed by Congress." (A-31)

II. The Court of Appeals Correctly Held That the CORINTHOS Was Seaworthy Since She Complied With All United States Statutes, Regulations, and International Treaties, Concerning Inert Gas Equipment and the Absence of Inert Gas Equipment Did Not Render Her Unseaworthy Under Existing Applicable Law.

In a carefully considered analysis of applicable United States statutes and regulations, as well as the In-

4. The Court of Appeals erroneously assumed that the District Court was applying the federal/state law conflict doctrine of preemption when it used the term "preemption" in its decision. The District Court used the term "preemption", not as a term of art for the doctrine of preemption, but rather in its ordinary usage that it was directed by a statute to certain statutory requirements rather than to any former federal common law standard. Thus, it appears that the use of the term "preemption" was not intended to invoke the doctrine of preemption. This Court itself has utilized the same language in a well reasoned analysis of federal statutory versus federal common law conflicts. (*City of Milwaukee, supra*, pp. 1791, 1972 fn. 9)

ternational conventions and treaties to which the United States is bound, the Court of Appeals correctly concluded that the District Court was clearly erroneous in finding that the CORINTHOS was unseaworthy for failure to have an inert gas system onboard.

The Court of Appeals reversed the District Court and specifically held that CORINTHOS was seaworthy, having complied with all applicable statutes, regulations and conventions in existence at the time of this disaster. (See A-30 to A-31 Petition of Bankers Trust Company, *et al.* for Certiorari.) [5]

In addition, as a vessel entered in the American Bureau of Shipping (ABS), a classification society recognized by the U. S. Government as a government agency authorized to inspect and classify tank vessels (46 U. S. C. § 881), the CORINTHOS was subject to periodic inspection of her seaworthiness by American Bureau of Shipping surveyors. In accordance with such requirements, an inspection for the seaworthiness of the vessel and her equipment had been performed on board the CORINTHOS on January 30, 1975, the day before the collision. As a result of that inspection, her fire fighting and anti-explosion equipment were found by the ABS Inspector to be in full compliance with the rules of that classification society, the SOLAS conventions, and U. S. Coast Guard regulations and conventions. Accordingly, the ABS surveyor issued her Seaworthy Certificate (Blackeby Dep. Exhibit C-366, 14SA-18SA; Kallonas 990a-996a).

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5. At the time of the collision, the CORINTHOS had complied with the fire fighting and anti-explosion provisions of the Safety of Life at Sea Conventions (SOLAS) of 1948 and 1960. (Blackeby Dep., Exhibit C-366, 19SA-34SA; Peroulakis Dep., Exhibit C-344; Kallonas 996a-998a; SOLAS, 1948, Part E; SOLAS, 1960, Parts D & E).

The Court of Appeals decision shows that the panel was fully apprised of all such U. S. and International standards in existence at the time of this casualty and the appeals panel properly concluded that the CORINTHOS could not be unseaworthy when it had complied with the terms of the applicable statutes and treaties.[6]

The Court of Appeals was quite correct when it held that the District Court was clearly erroneous. The Court of Appeals reversed and found the CORINTHOS seaworthy.

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6. The Appeals Court *en banc* denied the petition of Bankers Trust Co., *et al.*, for a rehearing *en banc* on July 8, 1981.

CONCLUSION

The Petition of Bankers Trust Company, *et al.* for Certiorari in this matter should be denied. The Court of Appeals decision with respect to the inerting of the CORINTHOS is not in conflict with the decision of this Court in *City of Milwaukee, supra.* On the contrary, the Court of Appeals correctly concluded that it would be guided by the Congressional mandate for inerting vessels of the size and type of the CORINTHOS. The Court of Appeals carefully analyzed the Port and Tanker Safety Act and its legislative history in conjunction with its finding that CORINTHOS complied with all relevant U. S. statutes, regulations and treaties, and it correctly concluded that the CORINTHOS was seaworthy.

Respectfully submitted,

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